# Part 129
# Operations: Foreign Air Carriers and Foreign Operators of U.S. Registered Aircraft Engaged in Common Carriage

This edition replaces the existing loose-leaf Part 129 and its changes.

This FAA publication of the basic Part 129, effective April 1, 1964, incorporates Amendments 129–1 through 129–23 with preambles.

Published
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## Appendix A



## Special Federal Aviation Regulations

Regulations" to replace the present "Civil Air Regulations" and "Regulations of the Administrator".

During the life of the recodification project, Chapter I of Title 14 may contain more than one Part bearing the same number. To differentiate between the two, the recodified Parts, such as this one, will be labeled "[New]". The label will of course be dropped at the completion of the project as all of the regulations will be new.

This action was published as a notice of proposed rule making in the Federal Register on October 8, 1963 (23 FR 10792) and as Notice number 63–38.

No adverse comments were received and no changes were requested as a result of the notice. No changes of the substance of the regulation have therefore been made. For conformity with paragraph (b) of § 128.13, paragraph (a) of that section has been amended by inserting the words "within the United States" to clarify the applicability of that paragraph.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to the new Part.

Interested persons have been afforded an opportunity to participate in the making of this regulation. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

In consideration of the foregoing, Chapter I of Title 14 of the Code of Federal Regulations is amended by deleting Part 44 and inserting the following new Part in Subchapter G [New], effective April 1, 1964.

This amendment is made under the authority of §§ 313(a) and 601 of the Federal Aviation Act of 1958 (48 U.S.C. 1354(a) and 1421).

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## Amendment 129–1

## Miscellaneous Amendments

**Adopted: December 23, 1964** **Effective: April 1, 1965**

**(Published in 29 FR 19096, December 30, 1964)**

The purpose of this amendment is to complete the remainder of the Agency's recodification program.

In an attempt to limit the use of "special" regulations to those occasions of temporary or peculiar regulatory need, this amendment deletes SR 411B and incorporates it into Part 129.

SR 411B, as applicable to foreign air carriers, is being recodified by including its substance in a new § 129.23, "Transport category cargo service airplanes: increased zero fuel and landing weights".

Part 121 of the Federal Aviation Regulations will contain the substance of SR 411B as it applies to air carriers other than foreign air carriers.

In addition, it is no longer necessary to use the word "[New]" when referring to a Part of the Federal Aviation Regulations. This is possible because all Civil Air Regulations in Chapter I of Title 14, with the issue of Part 121, have now been replaced by Federal Aviation Regulations.

In consideration of the foregoing, Part 129 of the Federal Aviation Regulations (14 CFR Part 129) is amended, effective April 1, 1965.

This amendment is made under the authority of Secs. 307, 313(a), 314, 501, 601–610, 902(c), 1102, 1110, and 1202 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, 1510, and 1522).

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The purpose of this amendment is to require foreign civil aircraft when operating within the 48 contiguous States and the District of Columbia to be equipped with distance measuring equipment (DME).

This amendment is based on a notice of proposed rule making (Notice 64–53) issued on December 18, 1984, and published in the Federal Register on December 23, 1984 (29 FR 18232). The comment period for the original notice expired on February 22, 1965. However, subsequent to that date, it came to the Agency's attention that some foreign air carriers, who did not receive a copy of the notice, desired to make comments on the proposal. The Agency extended the comment period until May 31, 1965, by a notice published in the Federal Register on May 12, 1983 (30 FR 61541).

Most of the comments received either approved of, or offered no objection to, the Agency's proposal to require foreign civil aircraft to be equipped with DME when operating within the 48 contiguous States and the District of Columbia. One comment, while offering no objection to the proposal to require DME for operations above 24,000 feet MSL, did object to requiring installation of DME in all turbopropeller powered aircraft after June 30, 1966, regardless of the altitude flown. The Federal Aviation Regulations (§ 121.349(c)) now require all United States air carrier and commercial operator turbopropeller powered airplanes to be equipped with DME regardless of the altitude flown The VORTAC system of air navigation is premised on the fact that, for maximum safety and efficiency, distance information from a DME is as important as the bearing information from the VOR. Furthermore, the VORTAC RHO Theta System of short range navigation has been adopted not only by the United States, but also by all members of ICAO as the international standard until 1975. In view of the above, the Agency does not agree that an exception should be made for turbopropeller powered airplanes operated by foreign air carriers below 24,000 MSL.

Several commentators stated that while they did object to the requirement for the installation of DME equipment, the proposed mandatory installation date of December 31, 1965, did impose a substantial hardship in view of the short period remaining to arrange for the installation of the equipment. The Agency believes, after reviewing these comments, that the foreign air carriers concerned have made a bona fide effort to arrange for installation of the DME equipment as soon as possible assuming this amendment is adopted, and that any inability to meet the proposed December 31, 1965, date would be due to difficulty beyond their control. Accordingly, the Agency has decided to delay the initial date for compliance with the requirement for installing DME for operations above 24,000 feet MSL and for all turbine engine powered airplanes until December 31, 1966.

Section 81.161 is being amended by adding thereto the word "civil" before the word "aircraft" to correct a typographical omission that occurred when that section was recently amended in amendment 91–19. This amendment to 91.161 is being made effective September 21, 1965, to coincide with the effective date of amendment 91–19.

Interested persons have been afforded an opportunity to participate in the making of this amendment (29 FR 18232, Notice 64–53), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, sections 91.43 and 129.17 of the Federal Aviation Regulations are amended effective September 18, 1965, and section 91.161 thereof is amended effective September 21, 1965, as follows.

This amendment is issued under the authority of sections 307, 313(a), and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1348, and 1421).

country in which the aircraft is registered.

Under the current regulations, no person may act as a flight crewmember unless he holds a current airman certificate issued by the country in which the aircraft is registered. No provision is made for the validation of airmen certificates by the country of registry.

Section 1.2.1 of Annex I to the Convention on international Civil Aviation (Fifth Edition, November 1962) to which the United States is a party provides for both issuance and validation of airmen certificates by the country of registry. The ICAO rule enables contracting states which are not equipped to issue all types of airmen certificates to validate the appropriate certificates of other contracting states.

Failure of the Federal Aviation Regulations to provide for both issuance and validation of airmen certificates by the country of registry is unintentional. Furthermore, with respect to other ICAO countries, the current situation does not conform to the mandate of section 1102 of the Federal Aviation Act of 1958 which requires the Administrator to act consistently with any obligation assumed by the United States in any convention. Accordingly, an amendment to § 129.15 is necessary.

Since this amendment is minor in nature, notice and public procedure hereon are unnecessary, and good cause exists for making this amendment effective immediately.

In consideration of the foregoing, § 129.15 of Part 129 of the Federal Aviation Regulations (14 CFR 129.15) is amended to read as follows.

This amendment is made under the authority of sections 305, 313(a), and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1346, 1354(a), and 1502).

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## Amendment 129–4

## Airborne Distance Measuring Equipment; Civil Aircraft (including Foreign Civil Aircraft) Within Alaska and Hawaii

**Adopted: April 15, 1966** **Effective: July 1, 1966**

**(Published in 31 FR 6265, April 23, 1966)**

The purpose of this amendment is to extend the airborne distance measuring equipment (DME) requirements, now in effect in the 48 contiguous States and the District of Columbia, to civil aircraft (including foreign civil aircraft) operating in the VOR air navigation system in the States of Hawaii and Alaska.

This amendment was proposed as a notice of proposed rule making (Notice 65–38) issued on December 6, 1965, and published in the Federal Register on December 10, 1965 (30 FR 15296). The basis for this amendment is fully discussed in that notice and in previous amendments cited therein.

All of the comments received in response to Notice 65–38 concurred in the adoption of this amendment.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matter presented.

In consideration of the foregoing, and for the reasons set forth in Notice 65–38, Parts 91,* 121,* and 129 of the Federal Aviation Regulations are amended, effective July 1, 1966.

This amendment is made under the authority of sections 307, 313(a), 601, 604 and 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354, 1421, 1424, and 1425).

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* Parts 91 and 121 are published separately.

large aircraft to, from, and within the United States. The security program includes re:requirements for the screening, by weapon-detecting procedures or facilities, of all passengers and all property intended to be carried in the aircraft cabin prior to boarding.

This amendment is based on a Notice of Proposed Rule Making (Notice No. 7) published in the Federal Register on January 25, 1974 (39 FR 3293) and certain requirements of the Air Transportation Security Act of 1974 (Public Law 93–366, Section 202 approved August 5, 1974; 49 U.S.C. 1356).

A majority of the 42 comments received in response to Notice 7 expressed disagreement with the proposal, basically because the proposal did not take into consideration the applicability of security laws and requirements in foreign countries and would create a potential for conflict with them.

The Department of State, while endorsing rules having the objective that foreign carriers landing or taking off in the United States use a security program, emphasized that foreign states may adopt different approaches to meet the particular security problems they face, and suggested that the rules recognize that procedures other than the precise security program applicable in the United States would also be acceptable, as long as they are effective.

It is recognized that subsequent to the issuance of Notice 74–3, ICAO on March 22 adopted Annex 17, ''Safeguarding international Civil Aviation Against Acts of Unlawful interference'' which became applicable on February 27, 1975. However, neither that Annex nor any other ICAO Annex contains an ''international Standard'' that would require the screening of all passengers and carry-on baggage prior to boarding of an aircraft for foreign air transportation. The more recent enactment of section 202 of Public Law 93–366 amended the Federal Aviation Act of 1958 and expressly directs the Administrator to prescribe screening requirements for foreign air carriers. Specifically, that law added a new section 315(a) to the 1958 Act which provides as follows:

> The Administrator shall prescribe or continue in effect reasonable regulations that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation.

Security programs, including screening provisions, currently required for U.S. air carriers under § 121.538 of the Federal Aviation Regulations comply with the statutory mandate in section 202 of Public law 93–366. Adoption of the security requirements set forth in this amendment for foreign air carriers is necessary to achieve compliance with that law as it pertains to foreign air carriers.

In many countries, including the United States, a ''sterile concourse'' concept is used at airports to achieve adequate security. The discharge of unscreened passengers with carry-on baggage into an otherwise sterile concourse defeats the security systems. Thus, a state that is without an adequate security system will create security problems beyond its borders for those other states with which it is linked in international air transportation. Moreover, those states without adequate and well defined security systems can be expected to be likely targets for future attacks against air commerce. All states must have adequate and well defined security systems if all passengers, crewmembers and aircraft are to be protected. The adoption of this amendment to Part 129 is consistent with this objective.

This amendment is also consistent with security recommendations of the international Air Transport Association (IATA). On May 21, 1974, the IATA Executive Committee adopted procedures developed by its Security Advisory Committee and recommended that certain ''minimum security procedures'' be implemented at international airports. One of these procedures provides for the screening of all passengers and items entering sterile areas. Another provides for the protection of aircraft parked at ramps. This amendment meets these IATA recommended ''minimum security procedures.''

The wording of proposed subsection 129.25(a), (b)(1), (b)(3), and (c) has been changed to achieve conformity with new section 315(a) of the Federal Aviation Act of 1958, which was enacted by Public Law 93–366, and to recognize the need for a certain degree of flexibility with respect to procedures

account the applicable law and particular circumstances for each foreign air carrier. These changes are within the scope of Notice 74–3, while recognizing that a security program for a foreign air carrier may be different from the precise procedures required in the United States and still be effective. However, the intent of this requirement is that all passengers and all property intended to be carried in the aircraft cabin be screened prior to boarding in accordance with that air carrier's security program.

This amendment is issued under the authority of sections 313(a), 315, 601, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356 1421, and 1502), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, Part 129 of the Federal Aviation Regulations is amended effective October 9, 1975.

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## Amendment 129–6

## Aircraft Security

**Adopted: July 15, 1976** **Effective: August 23, 1976**

**(Published in 41 FR 30106, July 22, 1976)**

The purpose of these amendments to Part 129 of the Federal Aviation Regulations is to ensure that x-ray systems used by foreign air carriers for carry-on baggage inspection in the United States meet minimum guidelines and standards prescribed by the U.S. Food and Drug Administration and are operated in accordance with certain operating requirements. Parts 121 and 129 of those regulations are also amended to be consistent with certain provisions of the Air Transportation Security Act of 1974 (Public Law 93–366) that apply to air carriers and foreign air carriers in the conduct of operations governed by Parts 121 and 129.

Interested persons have been afforded an opportunity to participate in the making of these amendments by a Notice of Proposed Rule Making (Notice No. 75–42) issued December 31, 1975, and published in the Federal Register on January 6, 1976 (41 FR 1085). The FAA received five public comments, all of which were generally in agreement with the proposal. Two commentators recommended changes to the proposal with respect to those sections that pertain to photographic film. The FAA is considering those proposals and will take whatever action is deemed appropriate. One of the two commentators also recommended changes to the standards set forth in both § 121.538a and proposed § 129.26. As explained in the preamble to Notice No. 75–42, and as more fully explained in Notice No. 74–22 (39 FR 22275; published June 21, 1974), the performance standards for x-ray systems that are proposed for new § 129.26, and that were adopted in § 121.538a by Amendment 121–117, are based on guidelines and standards that have been adopted by the U.S. Food and Drug Administration (FDA), Department of Health, Education, and Welfare, to ensure the protection of public health and safety. The FAA believes those guidelines and standards provide an appropriate level of safety and they are, therefore, adopted as proposed.

These amendments and the reasons therefore are the same as those contained in Notice No. 75–42. As was stated in Notice No. 75–42, the FAA considers the environmental analysis prepared in conjunction with the adoption of Amendment 121–117 to Part 121 to be appropriate support for its conclusion that the use of an x-ray system in accordance with the requirements prescribed in § 129.26 by this proposal will not have a significant impact on the human environment. A copy of the FAA's environmental analysis prepared in conjunction with rule making involving Amendment 121–117 is on file at the FAA. Copies may be obtained by writing to the Federal Aviation Administration, Civil Aviation Security Service, Attention ACS–200, 800 Independence Avenue SW., Washington, DC 20591.

## Operations Review Program

## Amendment No. 1: Clarifying and Editorial Changes

**Adopted: October 20, 1976** **Effective: November 29, 1976**

**(Published in 41 FR 47227, October 28, 1976)**

The purpose of these amendments is to incorporate into Parts 63, 91, 105, 121, 123, 129, 135, 145, and 147 of the Federal Aviation Regulations several clarifying and editorial revisions.

These amendments are based on a notice of Proposed Rule Making (Notice 75–39), published in the Federal Register on December 8, 1975 (40 FR 57342) and are the first in a series of amendments to be issued as part of the First Biennial Operations Review Program.

Interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all comments presented. Several changes have been made to the proposed rules based upon the relevant comments received and subsequent review by the FAA. Those changes and comments are discussed below and, except for those changes, the reasons for the amendments remain the same as contained in Notice 75–39. The following discussion is keyed to the like-numbered proposals contained in Notice 75–39.

*Proposal 1.* Addition of class ratings to flight engineer certificates is presently controlled by § 63.33 and hence the proposed revision to § 63.45 could create a redundancy. As the applicable dates have passed, § 63.45 is no longer operative and therefore it is being deleted.

*Proposal 4.* This proposed change to § 91.24 is being deferred for consideration in a later notice.

*Proposal 9.* As December 30, 1975 has passed, § 91.52(g) is no longer applicable and is therefore deleted.

*Proposal 13.* This proposal to amend § 91.181 contained two typographical errors. The reference to §§ 91.127 and 91.129 should read §§ 91.217 and 91.219, respectively.

*Proposal 27.* This proposal to amend § 121.433(c)(1)(i) was intended to clarify the existing rule. Several commentators noted that the intended clarification had the opposite effect. Therefore, this proposal is being withdrawn to allow further study to determine whether a clarification is necessary and how best to accomplish it.

*Proposal 39.* One commentator opposed the addition of paragraph (b) to § 135.67 on the basis that it could be physically impossible for the pilot in command to make the determination that the inspections required under § 91.217 have been made. In light of this comment and the fact that review of Part 135 is presently underway, this proposal is being withdrawn from consideration at this time.

*Proposal 41.* One commentator pointed out that the preamble did not speak to this proposal to amend § 135.138(b). The only change effected by this proposal is to correct the reference to revised Part 61. The commentator also objected to use of the words "related advisory circulars." As those words are contained in the current rule and removal would amount to a substantial change, the comment is beyond the scope of this regulatory action.

*Proposals 43 and 44.* One commentator stated, "The deletion of section 135.144a leaves the proposed rule incomplete in that FAR 23.1(a) applies to airplanes of nine seats or less and therefore no provisions are given for this in 135.144 as proposed." Such is not the case. The change to § 135.144 and the deletion of § 135.144a will in no way affect current substantive requirements for aircraft of nine seats or less. Section 135.144, as its title indicates, imposes additional requirements for airplanes carrying 10 or more passengers.

utilize different titles for their manuals. The intent of the regulation is not to require a manual of specific title but a manual of specific content. Therefore, to preclude confusion, the language is changed to "a manual containing inspection procedures".

These amendments are made under the authority of Secs. 307, 313(a), 601, 603, and 607, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, 1423, and 1427), and Sec. 6(e), Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, and for the reasons stated in Notice No. 75–39, Parts 63, 91, 105, 121, 123, 129, 135, 145, and 147 of the Federal Aviation Regulations are amended effective November 29, 1976.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

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## Amendment 129–8

## Use of X-ray Security Systems

**Adopted: March 16, 1978** **Effective: April 24, 1978**

**(Published in 43 FR 11976, March 23, 1978)**

**SUMMARY:** This rule amends the regulations pertaining to the use of x-ray security systems by domestic, flag and foreign air carriers and by commercial operators of large aircraft engaging in common carriage. It requires that a copy of the most recent radiation survey be maintained at the certificate holders principal business office and at the place where the x-ray system is in operation and that it be made available for inspection upon request by the Administrator. In addition, this rule requires that a sign be posted informing passengers that they may request a physical inspection of their photographic equipment and film packages without exposure to an x-ray system. The FAA believes that these amendments are necessary to enable the agency to monitor the performance of x-ray systems in a more effective manner and to inform the public that agency regulations allow a physical inspection, in lieu of an x-ray inspection, for photographic equipment and film.

**FOR FURTHER INFORMATION CONTACT:** T.P. Tsacoumis, Technical Security Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–8491.

### SUPPLEMENTARY INFORMATION:

#### Regulatory History

In Notice No. 77–3 (42 FR 1741, March 31, 1977), the FAA issued a notice of proposed rulemaking pertaining to the use of x-ray security systems by domestic, flag and foreign air carriers and by commercial operators of large aircraft engaging in common carriage. This notice proposed that affected certificate holders: (1) maintain a copy of the most recent radiation survey at their principal business office (except foreign air carriers) and at the place where the x-ray system is in operation and make it available for inspection upon request by the Administrator; (2) post a sign informing passengers that they may request a physical inspection of their photographic equipment and film without exposure to an x-ray system; (3) post a sign informing passengers, in the event their x-ray system exposes any carry-on baggage or item to 0.01 milliroentgen or less of radiation during the inspection, that x-ray inspection will not be harmful to any type of film; and (4) post a sign informing passengers, in the event their x-ray system exposes any carry-on baggage or item to more than 0.01 milliroentgen of radiation during the inspection, to remove all x-ray and scientific film from their carry-on baggage before inspection.

In response to Notice No. 77–3, comments were received from American Science and Engineering, Inc. (AS&E), the United States Department of Health, Education and Welfare, Food and Drug Administration (HEW/FDA), Astrophysics Research Corporation (ARC) and the Air Transport Association (ATA).

AS&E commented in favor of all proposals contained in Notice No. 77–3. HEW/FDA stated that it did not believe that personnel dosimeters were necessary for operators of these x-ray systems, provided the equipment in use complied with pertinent FDA requirements. Sections 121.538a and 129.26 currently require compliance with these standards.

ARC stated that it was not necessary to inform passengers, in the event machine radiation levels were 0.01 milliroentgen or less during inspection, that x-ray inspection would not damage any type of film. ARC was opposed to this proposal because it believed that the current approach to film safety at airports is adequate.

ATA stated that the requirement to use personnel dosimeters and to evaluate their performance should be retained but that records of operator duty time were not necessary. ATA opposed the proposal to require that a copy of the most recent radiation survey be kept at the place where the x-ray system is in operation, since it believes that retention of a copy at the certificate holder's principal business office is sufficient. ATA stated that radiation surveys should be conducted annually (current rules require evaluations on a six-month basis) and opposed the proposals to change existing signs since it believes these signs are adequate to protect the travelling public.

**Explanation of Amendments**

As proposed in Notice No. 77–3, §§ 121.538a and 129.26 are being amended to require all affected certificate holders to post a sign informing passengers that they have the right to request that a physical inspection be made of their photographic equipment and film packages without exposure to an x-ray system.

Although §§ 121.538a(e) and 129.26(b)(4) currently require that a physical inspection of photographic equipment and film packages be made upon passenger request, these rules did not require certificate holders to inform passengers that they could request a physical inspection of these items. The agency believes that such a statement is necessary to make sure that passengers understand that FAA regulations do not require them to expose their photographic equipment and film to x-ray inspection.

Signs previously made available to certificate holders by this agency contain a statement informing passengers of this right, so operators using these signs would not be required to change them. Certificate holders desiring to obtain FAA-prepared signs may do so by contacting their respective principal security inspectors.

In Notice No. 77–3, the agency also proposed to amend §§ 121.538 and 129.26 by requiring that a copy of the results of the most recent radiation survey be maintained at the certificate holder's principal business office (except for foreign air carriers) and at the place where the x-ray system is in operation. The agency proposed that this amendment be made by adding a new paragraph (1) to § 121.538 and a new paragraph (c) to § 129.26.

The FAA now believes that it would be more appropriate to include this requirement in a new paragraph (f) in § 121.538a, since that section prescribes the requirements for the use of x-ray systems. As proposed in Notice No. 77–3, this provision will be incorporated into § 129.26 by adding a new paragraph (c).

In addition, Notice No. 77–3 incorrectly assumed that the most recent radiation survey would always be conducted pursuant to the six-month requirement contained in § 121.538a(b) or § 129.26(b)(1) when, in fact, it could be conducted pursuant to § 121.538a(c) or § 129.26(b)(2) if the x-ray system had been initially installed or moved to another location.

need to examine these documents during the course of inspecting a particular x-ray installation. Requiring that a copy of the survey results be maintained wherever a certificate holder operates an x-ray system assures that agency personnel will have immediate access to these results whenever necessary for the effective performance of their duties.

## Differences Between Proposed Rule And Final Rule

If the agency did adopt the 0.01 milliroentgen standard contained in Notice No. 77–3, certificate holders would be required to advise passengers, in the event radiation levels were 0.01 milliroentgen or less, that x-ray inspection would not be harmful to any kind of film. In the event radiation levels were greater than 0.01 milliroentgen, passengers would have to be advised to remove all x-ray and scientific film.

The FAA believes that the current requirement to advise passengers to remove all x-ray and scientific film from carry-oil baggage prior to x-ray inspection (without regard to radiation levels) and to remove all film from carry-oil baggage in the event radiation exposure exceeds 1 milliroentgen is adequate to protect photographic equipment and film packages from being adversely affected by radiation. Experience under these rules has not revealed any substantiated incidents of damage to film as a result of it being exposed to an x-ray system utilized pursuant to § 121.538a or § 129.26.

Although the agency does not believe that all kinds of x-ray and scientific film will be damaged whenever exposed to radiation levels of 0.01 milliroentgen or less, we do believe that damage to certain types of highly sensitive x-ray and scientific film is possible and that passengers would be well-advised not to take any chances by exposing their x-ray and scientific film to any amount of unnecessary radiation. In addition, since x-ray exposure has a cumulative effect on film, those passengers subjecting the same package of x-ray or scientific film to numerous x-ray inspections would have a greater chance of experiencing film damage.

In addition, the FAA believes that signs advising passengers about x-ray inspections should be as uniform as possible. Under the current rules, all certificate holders may use an identical sign unless a carrier utilizes a system emitting more that 1 milliroentgen of radiation. In this case, passengers must be advised to remove all film prior to inspection, rather than just x-ray and scientific film. However, since only one x-ray system out of the 495 currently in use in the United States is designed to emit more than 1 milliroentgen of radiation, virtually all certificate holders use a standard sign supplied to them by the FAA. Moreover, the International Civil Aviation Organization (ICAO) also recommends that signs posted at airport x-ray systems advise passengers to remove all scientific and x-ray film prior to x-ray inspection (without regard to radiation levels) and to remove all film in the event radiation from the system exceeds 1 milliroentgen.

If the 0.01 milliroentgen standard proposed in Notice No. 77–17 were adopted, air carriers would then be required to use one of three statements relating to film safety (rather than one of two statements as provided for in the current rules), depending upon the radiation levels emitted from their x-ray systems. The FAA believes that signs relating to film safety should differ only when necessary to protect photographic equipment and film packages from being adversely affected by exposure to radiation. The agency further believes that amending the regulations to require an additional statement relating to film safety in the event radiation levels are 0.01 milliroentgen or less (i.e., x-ray inspection will not be harmful to any type of film) can only expose certain scientific and x-ray film to an increased risk of damage. In addition, adoption of the 0.01 milliroentgen standard could result in passenger confusion as to what type of inspection should be requested, since many passengers would not be aware that signs would vary with the technical performance characteristics of the system in use. Accordingly, the agency does not believe that adoption of this proposal would be in the public interest.

## Drafting Information

The principal authors of this document are T.P. Tsacoumis, Civil Aviation Security Service and Marshall S. Filler, Office of the Chief Counsel.

## Amendment 129–9

## Aircraft Security; Charter Flights

**Adopted: June 6, 1978** **Effective: July 25, 1978**

**(Published in 43 FR 24827, June 8, 1978)**

**SUMMARY:** This amendment extends the regulations governing aircraft security to cover: (1) public charter flights conducted by domestic, flag, supplemental and foreign air carriers, and (2) all intrastate public charter flights conducted in large aircraft by a commercial operator engaging in intrastate common carriage operations with a frequency specified in the regulations. In addition, this amendment requires that these flights be provided with appropriate law enforcement support by airport operators or certificate holders to support passenger screening operations. The FAA considers these security requirements to be necessary due to the increased threat of criminal violence and air piracy and the recent liberalization of charter requirements by the Civil Aeronautics Board.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Jones, Air Operations Security Division, Civil Aviation Security Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–8409.

**SUPPLEMENTARY INFORMATION:**

### Background

In Notice No. 78–4 (43 FR 9160, March 6, 1978), the FAA proposed to amend Parts 121 and 129 of the Federal Aviation Regulations and extend the rules pertaining to aircraft security to cover charter flights conducted by domestic, flag, supplemental and foreign air carriers, and all intrastate charter operations conducted by a commercial operator engaging in common carriage operations governed by § 121.7. In addition, it was proposed to require the aircraft operators to provide lab enforcement support for charter operations conducted at airports not governed by Part 107 of the regulations.

In response to requests of several organizations that petitioned the agency for additional time to study the proposal prior to submitting their comments, the FAA issued a notice on March 30, 1978, which extended for 15 days the period for submitting comments in response to Notice No. 78–4.

### Discussion of Comments

The FAA received more than 100 comments from members of the general public, individual air carriers and airport operators, and organizations representing air carriers, foreign air carriers, airport operators, pilots and flight attendants.

Expressions of general support for the proposal were received from most members of the general public who commented: the National Air Carrier Association, the Air Line Pilots Association, and the Association of Flight Attendants.

Comments received from representatives of foreign air carriers were about equally divided in their expressions of approval and disapproval of the proposals.

The Air Transport Association of America (ATA), which represents most of the U.S. scheduled air carriers, and the Airport Operators Council International (AOCI) acknowledged that recent changes and proposed changes in the regulations of the Civil Aeronautics Board (CAB) governing charter flights will remove certain security safeguards which have served to protect charter flights without the use of security procedures prescribed by regulation in the interest of safety. However, these organizations

none of it being borne directly or indirectly by the individual passengers.

Comments on behalf of air carriers, foreign air carriers, and airport operators expressed concern about the added costs which the proposal will impose upon carriers and airport operators required to provide law enforcement support at Part 107 and non-Part 107 airports.

Initially, it should be noted that costs which the proposal could have imposed on carriers and airport operators have been reduced under this amendment by virtue of the exclusion of "private charters" from coverage of the requirements for screening and law enforcement support.

The FAA recognizes that the adoption of the proposal requiring law enforcement support for the screening of passengers boarding public charter flights will probably result in additional costs for carriers and airport operators. However, the FAA is convinced there is adequate justification in the interest of safety in air transportation and air commerce to adopt the proposed security measures for public charters. The protection such security measures will afford passengers on those charters will, in the opinion of the agency, justify any unavoidable costs they impose on carriers and airport operators. However, judging from comments received from individuals in response to Notice No. 78–4, most people appear to be willing to pay these additional costs.

Certain comments contained objections to the proposal making the carriers responsible for law enforcement support at non-Part 107 airports. They contend that law enforcement support should be the responsibility of the operator of those airports rather than the air carrier. The FAA does not agree with that contention. Considering that airport selection normally rests with the carrier and that charter flights are unscheduled, we believe it is more practicable to impose the responsibility for providing law enforcement support on the carrier at non-Part 107 airports. Under the circumstances, the FAA has determined that such comments do not justify supplemental rulemaking action, as requested, to make non-Part 107 airport operators responsible for providing law enforcement support rather than the carriers. Accordingly, the petition for such action is denied.

As previously mentioned, the amendment adopted herein excludes "private charters" from the screening and law enforcement support requirements. Furthermore, FAA review of information on file with the Civil Aeronautics Board regarding world-wide charter operations for the period July 1976 through June 1977, indicates that non-Part 107 airports handle a very small portion of the total number of charter flights conducted. Accordingly, the FAA believes the adoption of this amendment is likely to have a minimal economic impact on carriers and airport operators.

Certain comments contained objections to the fact that the proposal does not apply the security regulation to air taxi operators certificated under FAR Part 135. The agency cannot extend coverage of the regulation to air taxi operators by this amendment because such action would go beyond the scope of Notice No. 75–1. However, the need for extending security requirements to air taxi operations will be re-evaluated. At the present time approximately 26 air taxi operators have elected to screen their passengers under an FAA-approved program set forth in their operations specifications.

In response to comments from representatives of the State of Alaska, it should be pointed out that exemptions currently in effect for operators in that State will be extended, as appropriate, and made applicable to certain of the requirements prescribed in this amendment.

It should also be noted that the security regulations prescribed in 121.538 currently apply to only large aircraft operations. Small aircraft operations are excluded from coverage of the security regulation by virtue of § 121.9 which requires Part 121 certificate holders to comply with the operating rules in FAR Part 135 in lieu of those in FAR Part 121.

## Drafting Information

The principal authors of this document are Robert P. Jones, Civil Aviation Security Service, and R.G. Leary, Office of the Chief Counsel.

Parts 121 and 129) are amended, effective July 25, 1978.

(Secs. 313(a), 315, 316, and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, and 1421), Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

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## Amendment 129–10

## Radiation Surveys of Airport X-Ray Inspection Cabinets

## Extension of Time

**Adopted: September 11, 1979** **Effective: October 19, 1979**

**(Published in 44 FR 54467, September 20, 1979)**

**SUMMARY:** This amendment changes the regulation pertaining to surveys of baggage x-ray inspection cabinets by extending the time required for such surveys from six months to one year. Experience has shown that the reliability of these devices is excellent, the radiation hazard to employees negligible, and the extension fully justified.

**FOR FURTHER INFORMATION CONTACT:** Theo P. Tsacoumis, Technical Security Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone (202) 755–8715.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 15, 1978, the Air Transport Association of America (ATA) petitioned the FAA for expedited rule making to amend Part 121 of the Federal Aviation Regulations (FARs), by extending the time required for surveys of baggage x-ray inspection cabinets from six calendar months to one year.

On March 15, 1979, after review and pursuant to the ATA petition, the FAA published a Notice of Proposed Rule Making (Notice No. 79–5) in the Federal Register (44 FR 15732) which proposed to amend Parts 121 and 129 of the FARs in accordance with the ATA petition.

### Discussion

Three comments were received in response to the petition. Two commenters supported the proposal and a third commenter stated that the change should be made without endangering the traveling public, airport and airline employees. This commenter urged the FAA to study carefully all available information on the amounts of radiation emitted by x-ray inspection cabinets and amend the regulations only after a careful analysis of this data indicates that the survey time can be extended without endangering the traveling public, airport and airline employees.

As stated in the Notice, the FAA receives a copy of each six-month x-ray survey. After an analysis of these records, it has concluded that there is no excessive leakage emanating from these x-rays, the reliability of these devices is excellent, and the public and airport and airline employees would not be endangered by an extension of the survey time.

1979 (44 FR 11034).

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## Amendment 129–11

## Airplane and Airport Operator Security

**Adopted: January 12, 1981** **Effective: September 11, 1981**

**(Published in 46 FR 3782, January 15, 1981)**

**SUMMARY:** These amendments revise and consolidate security regulations for scheduled passenger and public charter operations in a new Part of the Federal Aviation Regulations and extend those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. The consolidation facilitates public access to aviation security regulations. These changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

**FOR FURTHER INFORMATION CONTACT:** Mr. H.E. Smith, Regulatory Projects Branch, (AVS–24) Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755–8716.

**SUPPLEMENTARY INFORMATION:** On November 1, 1979, the FAA published Notice of Proposed Rule Making No. 79–17 (44 FR 63048), to extend the FAA security regulations applicable to scheduled passenger and public charter operations of U.S. and foreign air carriers and U.S. intrastate operators to certain air taxi operators and small airplane operations conducted by U.S. and foreign operators. It also proposed to simplify these regulations and consolidate them (for U.S. certificate holders) into a new Part of the Federal Aviation Regulations to facilitate public access to security regulations.

All interested persons have been given an opportunity to participate in the making of this new Part 108 and the revisions to Parts 107, 121, 129, and 135. Due consideration has been given to all matters presented. In response to comments received and after further study by the FAA, a number of changes are reflected in the rule as adopted.

### Background

Since their inception in 1972, FAA security regulations have been designed to meet threats of hijacking and other crimes against the specific kinds of aircraft operations that have proven to be most attractive to the potential hijacker or saboteur. For the most part these operations have involved large transport type airplanes with scheduled departure times, and generally have been conducted by air carriers under Certificates of Public Convenience and Necessity (CPCN) and other limited economic authority issued by the Civil Aeronautics Board (CAB), as well as by certain wholly intrastate operators who are not air carriers. Operating rules for these operators are set out in Part 121 (14 CFR Part 121) and, for this reason, FAA security regulations were initially placed in that Part.

Scheduled operations with large airplanes also have been conducted under § 135.2 of Part 135 (14 CFR Part 135). Security for these operations has been achieved through voluntary compliance with requirements similar to those in Part 121; however, the number of these operations is increasing.

Recently, and in particular since the passage of the Airline Deregulation Act of 1978 (Deregulation Act), the CAB has liberalized its policies and has granted broad authority to conduct scheduled operations with large aircraft. There now are numerous air carriers referred to in the Deregulation Act as "commuters" operating under Part 135 with authority to conduct operations similar to those that were previously conducted only by CPCN holders under Part 121. While CPCN holders are being allowed to discontinue service at different terminals, commuter air carriers are gaining these terminal and route authorizations. As a

## The Proposal

To ensure consistent application of FAA's security rules and to achieve the necessary level of security, Notice 79–17 proposed security requirements based upon airplane complexity instead of CAB authorizations. The proposal called for multilevel security requirements to be equally applicable to all scheduled and public charter passenger operations conducted by air carriers and other FAA certificate holders. The FAA certificate holder would have been required to meet the full security requirements that have been set out in Part 121, including an approved screening system, for operations conducted in airplanes with a seating configuration of 20 or more passenger seats. For operations conducted in airplanes configured for less than 20 passenger seats, the certificate holder would have been subject only to minimal security requirements, including passenger and shipper identification, airplane security, and arrangements for law enforcement response when needed. The proposal also would have retained the existing requirement in Part 135 for crewmember antihijack training.

A number of changes have been made in the final rules, as discussed in this preamble. A table is provided for comparing the major provisions of the proposed rule and the final amendments. It is to assist in understanding the changes that have been made and should not be relied upon as a complete statement of the amendments.

| Passenger Seating Configuration | Security Requirements |
|---|---|
| | Notice of Proposed Rule Making |
| 1–19 | Modified airplane and airport operator security program would have been adopted and implemented. |
| More than 19 | Full airplane and airport operator security program would have been adopted and implemented, including screening of all passengers and law enforcement presence. |
| | Final Amendments |
| 1–30 | No security program is required unless passengers have uncontrolled access to a sterile area and then a screening system and law enforcement presence must be provided for those passengers. |
| 31–60 | Airplane and airport operator security program must be adopted, but screening and law enforcement presence must be implemented only when the FAA identifies a security threat or passengers have uncontrolled access to a sterile area. |
| More than 60 | Full security program must be adopted and implemented, including screening of all passengers, law enforcement presence, and other significant safeguards. |

## Comments

Approximately 320 public comments were received in response to Notice 79–17. Nearly all of the commenters were against the proposal. The major objections were the cost of implementing the security requirements and the absence of any threat that justified extending screening and other security requirements to commuter operations. The commenters argued that the proposal would place an undue hardship on small communities and inhibit industry growth by causing commuters to avoid use of larger airplanes in order to gain advantage of the minimal security requirements for airplanes with less than 20 passenger seats.

## Economic Study

In analyzing financial data provided by the commenters, the security costs per passenger enplanement were found to vary so much that the FAA decided that further economic study was necessary. A sample of typical airports was examined to determine what the actual costs would be to implement the proposed requirements. The results of this small sampling indicated that a comprehensive indepth cost study was needed.

airport or for that flight.

Considerable reduction in the cost impact of this final rule has been effected through the changes in the proposal. While adoption of Notice 79–17 could have resulted in an estimated maximum annual operating cost of $8.80 million and maximum capital investments of $5.30 million (for airplane operators) and $.36 million (for airports), the maximum annual operating cost for the final rule will not exceed $3.15 million and no capital investment will be necessary. These changes and their economic impact are discussed below.

### Security Threat

The increased security threat to the commuter industry that was expected to result from implementation of the Deregulation Act has not materialized. Only one attempted hijacking of a commuter-operated airplane has occurred since the Deregulation Act was implemented. This attempt was thwarted by FBI negotiations resulting in apprehension of the hijacker.

While the threat of air piracy and sabotage exists for all levels of air transportation, the historical record clearly establishes that the threat is very serious for some levels and less serious for others. Although all sizes of aircraft have been subjected to hijackings, the most severe threat has been against the larger, longer-range, jet airplanes in scheduled passenger operations. Typically these airplanes have more than 60 passenger seats, the smallest being the BAC–111, which may be configured for as few as 65 passenger seats, and the more commonly used DC–9, which is typically configured for approximately 90 passenger seats. The number of U.S. hijackings of such airplanes has continued to rise in relation to worldwide hijackings and, over the past 3 years, the U.S. air transportation system has experienced 40 hijackings of these air carrier airplanes.

### Final Rule

Considering the economic burden that could be imposed on the small airport and airplane operators and the fact that the hijacking threat directed against commuters has not significantly increased, it is not appropriate to fully implement the proposed rule changes at this time. This final rule requires implementing a full security program only for scheduled and public charter operations with airplanes having a passenger seating configuration of more than 60 seats and for operations providing deplaned passengers access to a sterile area at the next landing when the access is not controlled by another airplane operator's security program.

For operations with airplanes having a passenger seating configuration of more than 30 but less than 61 seats, a full security program need not be implemented. A full program for these operations will have to be implemented only if the FAA notifies the airplane operator that a security threat exists with respect to a particular operation or set of operations.

While the frequency and extent of these threats cannot be predicted, the FAA expects that this contingency seldom will be invoked. If it is, it will probably not involve all airplane operators or all points served by a single operator, nor would all precautions have to be taken in every contingency.

Antihijack security training will continue to be required for all crewmembers of FAA certificate holders operating under Part 121 or Part 135. In addition, throughout Part 108 and the changes to Part 107 and § 129.25 of this chapter, the term "airplane" instead of "aircraft" is used since threatened operations have only involved airplanes and no other aircraft.

### Airplane Operator Security Requirements

None of the comments suggest, nor does FAA intend, lessening in any way the current security requirements for U.S. or foreign air carriers utilizing airplanes configured for more than 60 passenger seats or for U.S. airports presently served by these carriers on a regular basis. To ensure that passengers in scheduled or public charter operations with these airplanes benefit from a degree of security commensurate

Additionally, the FAA's economic study generally reflects significant increases in security costs per passenger as the airplane capacity decreases. The study indicates that for the lower half of the spectrum (the 1- through 30-seat airplanes), the economic hardship far outweighs the security benefit derived from even the minimal security requirements proposed in Notice 79–17 for airplanes configured for less than 20 seats.

For these reasons, the FAA has determined that airplanes with a seating configuration of 31 through 60 should be treated differently from those with 30 or fewer seats. Part 108, as adopted, requires FAA certificate holders conducting scheduled passenger and public charter operations in 31- through 60-seat airplanes to continue to conduct security training for crews, as presently required by §§ 121.417 and 135.331. Further Part 108 and changes to Part 129 require the adoption of a comprehensive security program for operations with 31 through 60 seats comparable to that required for operations with airplanes having more than 60 seats. However, the operator will normally only have to implement for 31- through 60-seat airplanes those portions of the program that call for (1) having procedures for contacting the law enforcement agency identified by the airport operator and arranging for response to an incident when needed; and (2) advising appropriate employees, including crewmembers, of the procedures and instructing them when and how to use them. If the operator also uses airplanes above 60 seats, a full security program must be implemented for these operations.

Each operator of 31-through 60-seat airplanes must be prepared to implement its full security program for all or part of its operations at a particular station or systemwide upon notification by the FAA that a threat exists. Such a threat would exist, for example, where operations in this category have been subjected to hijacking and a specific threat has been made that more hijackings will be perpetrated. Such a threat might also exist where information has been received or developed concerning airplanes in this category without a prior hijacking.

FAA certificate holders utilizing airplanes with a seating configuration of 1 through 30 seats, under the provisions of this rule, are only required to conduct antihijack crew training currently required by § 135.331. Because of the size, range, and public perception of the capacity and capability of these airplanes, this reactive security measure is considered adequate to meet the level of threat against this type operation.

### Law Enforcement Support

When a U.S. or foreign air carrier is required to implement a security screening system at an airport governed by Part 107, the airport operator is required to provide law enforcement support for that screening. When a carrier conducts operations from an airport not governed by Part 107 of this chapter and is required to use a screening system, the carrier continues to be required to provide law enforcement officers to support the screening system.

### Access to Sterile Areas

To protect the security of sterile areas, this amendment provides that operators of airplanes of any seating configuration may not discharge scheduled or public charter passengers into a sterile area unless: (1) the passengers and their accessible items are properly screened by the airplane operator; or (2) their access is controlled through surveillance and escort procedures or through the screening procedures of another operator.

Thus, unscreened passengers may have access to a sterile area where the discharging operator has made a prior arrangement with another FAA certificate holder or foreign air carrier, or in some cases the airport operator, having responsibility for the sterile area either for escort of the deplaning passengers into, through, and out of the sterile area or for the screening of those passengers before entry. Without these arrangements, operators not otherwise required by Part 108 or 129 to screen their passengers who wish to deplane their passengers in a particular operation into a sterile area at a particular airport must adopt and implement all the provisions of an appropriate security program with respect to that passenger operation. This requires that: (1)100 percent screening of the passengers and their accessible items be

As a result of these amendments, certain FAA certificate holders that operate smaller airplanes and have been required to meet the security provisions of § 121.538 are no longer required to implement full security programs. Under § 108.5 these operators or other operators utilizing 1- through 60-seat airplanes may elect to continue to operate under a full security program in order to discharge passengers into a sterile area, or may elect to operate under a full or modified security program to meet passenger expectations, to fulfill company security policies, or for other reasons. However, when FAA approval is obtained for any security program, § 108.5 requires that the airplane operator carry out the provisions of that program. Operators utilizing smaller airplanes who use their own separate facilities at certain airports will now be able, at those airports, to operate without screening passengers or providing law enforcement presence. For these operators this rule may represent a considerable economic savings.

An Air Carrier Standard Security Program meeting the requirements of this rule is available for use by all certificate holders. This program, jointly developed by FAA and industry, has proven very effective in lessening the certificate holder's administrative burden. The FAA encourages adoption of the Air Carrier Standard Security Program to ensure uniform implementation and use of security procedures.

## Airport Security Requirements

At U.S. airports regularly serving scheduled passenger operations of FAA certificate holders and foreign air carriers utilizing airplanes with more than 60 seats, this final rule requires the airport operator to adhere to the current provisions of Part 107.

At those airports regularly serving scheduled passenger operations utilizing 31-through 60-passenger-seat airplanes and at which the airplane operator is not required to screen its passengers, the airport operator must only identify the law enforcement agency that will respond to the airplane operator's request for assistance. Responsibility for establishing and implementing the actual arrangements and for obtaining assistance in the case of an incident rests with the airplane operator.

For these operations, the airport operator is required to submit to the FAA for approval a security program that identifies: (1) the law enforcement support available to respond upon request of the airport operator; (2) a description of the procedure to be used by the air carrier to summon support; (3) a description of the training the law enforcement officers have received; and (4) a description of the system of records of law enforcement actions taken in support of aviation security as called for by § 107.23.

If an airplane operator using airplanes with less than 61 passenger seats must adopt and carry out a full security program with a screening system, the airport operator must provide law enforcement support during all required passenger screening operations. The airport operator is required to submit to the FAA for approval a security program identifying the law enforcement support, the training received by law enforcement officers, and a description of the system for recording law enforcement actions taken in support of aviation security. These law enforcement support requirements are the only security requirements imposed on the airport operator for operations with airplanes configured for less than 61 passenger seats where screening is performed under a required security program.

## Economic Evaluation

Assessment of the economic impact of these amendments indicates that certain airplane and airport operators not previously required to have a security program may incur some costs in connection with scheduled and public charter passenger operations with airplanes having a passenger seating configuration of 31 through 60 passenger seats. Some additional costs will occur for these operators if they must implement contingency procedures included in security programs because of a threat condition. Most, if not all, of the costs of meeting contingencies would be associated with personnel and would not involve investments in x-ray machines, metal detectors, and alterations to airport terminals as might have been the case if the proposal in Notice 79–17 had been adopted. If a threat situation occurs, the FAA will work closely with the affected parties to ensure adequate, efficient, and cost-effective implementation of contingency procedures.

to take these heightened precautions and a threat necessitating such action would probably never involve all 11 carriers or 39 stations at a time.

However, in the unlikely event that all operators of 31-through 60-seat airplanes are required to implement contingency procedures at all stations for an entire year because of the greatest hijacking threat, the annual cost could be as high as $3.15 million. Whatever costs occur may be recovered through fare or temporary subsidy increases.

This $3.15 million maximum cost contrasts with the possible costs that would have resulted from the proposed rule. The FAA's evaluation indicates that it could have resulted in as much as $8.8 million in new annual operating costs for the affected airplane operators, $5.3 million in investments for security equipment and construction by airplane operators and $360,000 in airport improvements.

Because these amendments impose uniform security requirements on the basis of airplane size and the protection of sterile areas instead of the kind of FAA and CAB operating authority, some Part 121 operators will have an opportunity to reduce security costs at some stations. As is the current case, all Part 135 operators now screening voluntarily under an operations specifications amendment can elect to discontinue screening under this rule if they choose not to continue to have access to a sterile area. While the FAA cannot determine the exact amount of cost savings, it estimates the maximum possible annual operating cost savings of $13,720,526.

### Adoption of the Amendment

Accordingly Parts 107, 121, 129, and 135 are amended and new Part 108 is added as follows, effective April 1, 1981, or 60 days after a notice of approval of the recordkeeping and reporting requirements of new Part 108 by the Office of Management and Budget is published in the Federal Register, whichever is later.

(Secs. 313, 315, 316, 317, 601–610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, 1358, 1421–1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

This rule is a final order of the Administrator as defined by Section 1005 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1485). As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

NOTE.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

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## Amendment 129–11

## Airplane and Airport Operator Security

**Adopted: June 15, 1981** **Effective: September 11, 1981**

**(Published in 16 FR 3782, July 13, 1981)**

**SUMMARY:** This document prescribes the effective date for a new Part of the Federal Aviation Regulations that consolidates security regulations for scheduled passenger and public charter operations and extends those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. At the time this new Part was adopted, its reporting and recordkeeping requirements had not been approved by OMB, and the Part could not be made effective. That approval process has now been completed.

facilitates public access to aviation security regulations. The changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

Because new Part 108 contains reporting and recordkeeping requirements for which OMB approval is required, the effectivity of the new Part was delayed until April 1, 1981, or 60 days after OMB approval, whichever would be later. On April 29, 1981, OMB approved these requirements. A copy of the approval may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, No. 19726, 800 Independence Avenue SW., Washington, DC 20591.

Accordingly, this notice prescribes the necessary effective date and, except as noted, provides the 60-day notice referred to at the time these amendments were adopted.

In order to relieve certain airplane operators immediately of an unnecessary financial burden, this notice permits compliance without delay with new Part 108. When issuing Part 108, the FAA considered the economic burden that could be imposed on the small airplane operators and the fact that the hijacking threat directed against commuters has not significantly increased. It was determined that the implementation of a full security program should only be required for scheduled and public charter operations with airplanes having a passenger-seating configuration of more than 60 seats and for operations providing deplaned passengers access to a sterile area at the next landing when the access is not controlled by another airplane operator's security program. Accordingly, Part 108 provides that for operations with airplanes having a passenger-seating configuration of more than 30 but fewer than 61 seats a full security program need not be implemented.

For Part 108 to be effective immediately for any operator, the operator need only advise the Director of Civil Aviation Security of its intention to comply with the Part.

## Correction

In connection with new Part 108, the airport operator security rules in Part 107 were also amended (Amendment 107–1) to relate the airport operator's responsibilities, including law enforcement support, to the level of security required for airplane operators using the airport.

Section 107.7 requires the airport operator to notify the FAA, and appropriately amend its security program, whenever certain changed security conditions occur. Specifically, § 107.7(a)(4) provides that this action must be taken when the law enforcement support, as described in the airport operator's security program, is not adequate to comply with § 107.15. Amendment 107–1 was intended to add references in § 107.7(a)(4) to new security program requirements. However, because that provision is misnumbered in the current bound version of the Code of Federal Regulations (14 CFR 107.7), the amending language erroneously referred to it as § 107.7(a)(3). This amendment corrects the amending language to refer to § 107.7(a)(4). The Code of Federal Regulations will be corrected when it is next published in bound form.

## Effective Date and Correction

Accordingly, Amendments No. 107–1, 108 (New), 121–167, 129–11, and 135–10 will be effective September 11, 1981, or, for a certificate holder to which new Part 108 would apply, on the date that the certificate holder notifies the Director of Civil Aviation Security of its intention to comply with the Part, whichever date is earlier. The words of issuance of Amendment 107–1 are corrected to amend § 107.7(a) (4), instead of § 107.7(a) (3), by inserting the phrase ",(f) (1), or (g)(1)" after the phrase "§ 107.3(b)(7)". (Secs. 313, 315, 316, 317, 601–610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, 1358, 1421–1430); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE.—The FAA has determined that this document pertains to a rulemaking action which is not a major regulation under Executive Order 12291; that it is not significant under Department of Transportation

**Adopted: February 26, 1982** **Effective: April 28, 1982**

**(Published in 17 FR 13312, March 29, 1982)**

**SUMMARY:** These amendments make a number of minor changes to the Federal Aviation Regulations (FAR). They amend certain Parts to change prerequisites required for flight tests and the experience necessary for an airline transport pilot certificate. They change the validity period for the written test for a flight engineer certificate. In addition, they amend certain sections of the FAR by changing the word aircraft to airplane. Part 45 of the FAR is amended to permit an approved parts manufacturer to refer, on a tag, to readily available information when it would be impractical to mark the required eligibility information on the tag. Part 91 of the FAR is amended to delete the list of purposes for which a special flight authorization for foreign civil aircraft may be issued. Other sections are amended for purposes of clarification or correction.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. Wendell Owens, Regulatory Review Branch (AVS–22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 755–8714.

## SUPPLEMENTARY INFORMATION:

### Background

A number of these amendments address problems in the FAR which have been highlighted by numerous requests for exemptions and extensions of compliance dates. In addition, several areas in the FAR require interpretation and clarification. The remaining changes are editorial.

Generally, these amendments address unrelated items that have accumulated over recent years and are appropriate for consolidation in a miscellaneous amendment package.

### Discussion of Comments

The following discussions are keyed to like-numbered proposals contained in Notice 80–23 (45 FR 80450; December 4, 1980).

*Proposal 1.* The proposal to amend § 21.197 to make Part 135 operators eligible for special flight permits with continuing authorizations was disposed of separately in Amendment 21–54 (46 FR 37876; July 23, 1981).

*Proposal 2.* This proposal would correct an incomplete listing of sections. The correct sections are listed in Appendix A, Section A23.1(a), as §§ 23.321 through 23.459. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

*Proposals 3 and 9.* Sections 23.305(a) and 25.305(a) contain parallel requirements for structural strength and deformation; however, these include differences in wording and punctuation from the corresponding statements contained in the similar, but correctly stated §§ 27.305(a) and 29.309(a). These proposals would correct §§ 23.305(a) and 25.305(a) by making them consistent with §§ 27.305(a) and 29.305(a). One commenter points out that the word "or" was erroneously inserted at the time CAR 6 and 7 were recodified to Parts 27 and 29 of the FAR. The commenter further states that §§ 23.305 and 25.305 are correctly stated, and that §§ 27.305(a) and 29.305(a) (which have the word "or" inserted) should be revised accordingly.

As originally written, the word "detrimental" was used to quantify the amount of permanent deformation and prohibit acceptance of a loading test which resulted in deforming the tested article to an extent that would degrade its structural characteristics. Insertion of a comma or a conjunction between "detrimen-

the FAA disagrees with the commenter. Accordingly, the proposal is adopted without substantive change.

*Proposal 5.* This proposal would amend § 23.472(f) to delete reference to § 23.725 and insert the reference to § 23.723(a) in its place. This proposal would permit drop tests other than the free drop tests, and would make the requirement consistent with corresponding sections of Parts 25, 27, and 29. No comments were received on this proposal. Accordingly, the proposal is adopted without substantive change.

*Proposal 6.* No comments were received on the proposal to insert the word "red" before the word "arcs" in § 23.1549(d), for consistency with § 25.1549(d). The proposal is adopted without substantive change.

*Proposal 7.* This proposal would correct a reference to § 23.201(b) in § 23.1587(a)(1).

The reference to § 23.201(a) or (b) in § 23.1587(a)(1) is incorrect. Reference to § 23.201(a) as proposed in Notice 80–23 is also incorrect. Both references are for paragraphs dealing with control configurations. Section 23.201(c) deals with a maneuver as intended in § 25.1587(a)(1).

Two commenters suggest that the altitude loss information required by § 23.1587(a)(1) should be required for all airplanes regardless of whether or not they have independent controls. The FAA agrees and has amended § 23.1587(a)(1) to reference § 23.201(c) which applies to all airplanes regardless of their control configuration. The section is amended accordingly.

*Proposal 8.* This proposal would correct errors contained in the equation constants noted under A23.3, Special Symbols.

No comments were received on the proposal to correct the numbers in the velocity equations which will then correctly reflect the change from miles per hour to knots. This proposal is adopted without substantive change.

*Proposal 10.* This proposal would amend § 25.807 to make it clear that all transport category aircraft must have ditching emergency exits whether or not ditching certification is requested.

One commenter objects to the application of the ditching (emergency exit) requirement to all Part 25 and Part 29 aircraft. The commenter states that the ditching provisions of §§ 25.807 and 29.807 do not apply unless requested. This commenter also directs attention to Notice 80–23 which solicits economic information on these regulations.

Another commenter expressed full support of the proposal. This proposal is intended to clarify the existing regulation and does not establish a new requirement for transport category airplanes. Accordingly, the proposal is adopted without substantive change.

*Proposal 11.* No comments were received concerning these proposed minor editorial changes. Accordingly, the proposal is adopted without substantive change.

*Proposal 12.* This proposal would amend § 29.807 to make it clear that all transport category aircraft must have ditching emergency exits whether or not ditching certification is requested.

A commenter states that helicopters not certified for ditching will probably capsize immediately when rotor lift is lost because of their high center of gravity and lack of lateral stabilizing appendages such as wings. This commenter also claims that, because of the additional factor that compartments are not usually water-tight, it is impossible to determine a waterline. The commenter recommends the proposal be cancelled.

Two commenters strongly object to this proposal on the basis that the extension of the transport airplane condition to a helicopter is illogical because of the unique characteristics of helicopters. The commenters point out that the FAA previously considered this question and agreed that the proposed requirement was inappropriate.

attached to a part or container, the tag may refer to a specific and readily available reference manual or catalog which contains the required information.

One comment was submitted by the industry Association that petitioned for this rule change. It found the wording of this proposal to be reasonable.

Another commenter believed that the original concept of Parts Manufacturer Approvals (PMA) was primarily based on the production of parts such as spark plugs, pistons, piston pins, etc., to be used as duplicate parts without a specific part number. These parts are, in fact, required to have a specific part number. Further, the PMA manufacturer is required to mark the parts (or tags) with parts replacement eligibility. It was not proposed to remove the requirement for this information from § 45.15; it was proposed to provide that, in those cases where it would not be practical to mark the required eligibility information on the tag, the tag may contain a reference to a readily available manual or catalog containing the required eligibility information.

Section 45.15 is adopted without substantive change.

*Proposal 15.* Section 61.39(b) has required that an applicant for an airline transport pilot certificate or an additional rating who does not wish to retake the required written examination must have been continuously employed since passing the written examination and be participating in a pilot training program. For the exception from the 24-month requirement to apply, a person had to have been employed by a carrier immediately (within 24 hours) after taking the written examination; a strike or furlough constituted a break in continuous employment, thus invalidating the exception. The FAA has determined that this rule is too restrictive, since it is possible for a pilot to be on vacation for a longer period of time than some strikes or furloughs last, and it would be unfair to apply the exception provision to the vacationing pilot but not the striking or furloughed pilot. Accordingly, Notice 80–23 proposed to amend § 61.39 to provide that the applicant need only be employed within the period ending 24 calendar months after the month in which the applicant passed the written examination and at the time of the flight test. Notice 80–23 also proposed to eliminate the continuous employment requirement and substitute a requirement to complete initial training and when appropriate, transition or upgrade training, and to meet the recurrent training requirements. Requiring an individual's training to be current is a better means of ensuring retention of the knowledge tested by the written test than requiring continuous employment.

One commenter responded in support of the proposal. The proposal is adopted as proposed.

*Proposal 16.* Section 61.155(d) has provided that a commercial pilot may credit toward the total flight time required for an airline transport pilot certificate any second-in-command time "in operations under Part 121." However, § 61.51(c)(3) provides that for meeting the requirements for a certificate or rating, a pilot may log as second-in-command time all flight time during which that pilot acts as second in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted. The intent of § 61.51(c)(3), when it was adopted, was that this rule should apply to the experience requirements for each kind of pilot certificate. However, at that time no change was made in § 61.155(d). Notice 80–23 proposed to eliminate the phrase "in operations under Part 121," so that all second-in-command time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155. No comments were received on this proposal.

The proposal is adopted and all second-in-command time which meets the requirements of § 61.51(c)(3) may be credited under § 61.155(d).

*Proposal 17.* Section 63.35(d) has required continuous participation in a maintenance, flight engineer, or pilot training program of a Part 121 certificate holder for an applicant for a flight engineer certificate to be exempted from the 24-month validity period for the written examination. Similar to § 61.39, this section has been interpreted to mean that any break in employment, such as a strike or furlough, constitutes an interruption of continuous participation in a training program and prevents the exception from applying. The FAA has reevaluated this requirement and has determined that continuous participation in a training

No comments were received on this proposal. It is adopted without substantive change.

*Proposal 18.* Notice 80–23 proposed to amend § 65.101 to allow formal training to be substituted for the practical experience now required for repairman certificate eligibility. One commenter agreed with the substance of the proposal, with the exception that completed formal training should have the prior approval of the Administrator instead of being reviewed for acceptability after completion.

Because of the diversity and uniqueness of training associated with repairman ratings, it would be impractical to establish national uniform training standards necessary for prior approval of training programs. Conversely, FAA certificated air agencies, aviation manufacturers, and air carriers are best able to establish that formal training which will qualify the repairmen they employ to perform or supervise the maintenance of aircraft or components at its facilities. The FAA can then review the training and determine if it is acceptable. This amendment will provide a logical alternative to the 18 months of practical experience formerly required for repairmen eligibility and still provide an equivalent level of competency. Accordingly, this proposal is adopted without substantive change.

*Proposal 19.* It was proposed to amend § 65.127(b) to provide that a parachute rigger need only have available suitable housing that is adequately heated, lighted, and ventilated for drying and airing parachutes. This section has required, in part, a compartment for hanging a parachute vertically for drying and airing. Since parachutes are now made of synthetic fabrics, a vertical or horizontal means for drying and airing parachutes is also acceptable. However, the housing must still be adequately heated, lighted, and ventilated.

No comments were received on this proposal. Section 65.127(b) is being revised as proposed.

*Proposal 20.* Notice 80–23 proposed to delete the list of purposes for which a special flight authorization could be issued. The intent was to eliminate the need for an applicant to petition for an exemption from previous § 91.28 when the purpose was other than that specified under the rule. This was intended to relieve the burden on both the FAA and the public imposed by exemption procedures.

Review of the comments received revealed that even though all commenters supported the proposal, they apparently misconstrued intent, in believing that CAB authority, in addition to the FAA special flight authorization, would be necessary for all purposes, including those which formerly did not require CAB authority under the previous rule. The CAB also submitted comments consistent with most commenters indicating that the proposed rule was subject to misinterpretation. The CAB provided revised language for proposed § 91.28(c) to preclude any misunderstanding as to when CAB authority would be necessary.

In this regard the FAA agrees with the commenters and the CAB that the proposal was not clear relative to when CAB authority would be necessary. Accordingly, the FAA has amended the language of proposed § 91.28 to clarify when CAB authority would be necessary.

One commenter noted that, in the case of special flight authorizations for air shows (§ 91.28(b)(6)), the application procedure contained in proposed § 91.28(a) would no longer provide for applications to be made to the Regional Director of the FAA region in which the air show will take place. The commenter stated that the existing application procedure should be retained since it is economical and effective. The FAA agrees with this comment and has amended § 91.28(a) to reinstate this application procedure.

One commenter stated that it was not clear whether the Regional Director would have authority to issue special flight authorizations for extended periods of time; i.e., once justification had been established for an initial special flight authorization, there would be no benefit in repeating the procedure for each subsequent trip, as in the case of a Canadian amateur-built aircraft to participate at United States air shows. This comment was not considered since it was determined to be outside the scope of Notice 80–23.

Accordingly, this section has been amended consistent with public comments in the interest of clarification and adopted without substantive change.

flight attendant stations so that all floor-level emergency exits in each passenger compartment are observable from one or more of those stations so equipped. Section 121.319(a) requires, in part, that airplanes with a seating capacity of more than 19 passengers must be equipped with a crewmember interphone system. Section 121.319(b)(5)(i) requires that for large turbojet-powered airplanes, the interphone system must be accessible for use at enough flight attendant stations so that all floor-level emergency exits in each passenger compartment are observable from one or more of those stations. From a security and operational viewpoint, if the floor-level exit is located within a galley, and the entryway to the galley is observable, this will satisfy the operational/security requirements and, therefore, it would be unnecessary to view the exit itself. No comments were received on this proposal. Accordingly, it is adopted without substantive change.

*Proposals 24, 25, 27, and 28.* Sections 121.385, 121.389, 121.695, and 121.697 contained inconsistencies in the use of the words "aircraft" and "airplanes." The proposals would replace the word "aircraft" with the word "airplane" where it appears in §§ 121.385(a), 121.389(a)(2), 121.695(a), and 121.697(a) and (d). These editorial corrections would make the language consistent with the applicable word definitions. No comments were received on these proposals. Accordingly, they are adopted without substantive change.

*Proposal 26.* This proposal would have amended § 121.585 to require a certificate holder to notify a passenger declaring a firearm in checked baggage of the definition of a "loaded" firearm. It further would have required a certificate holder to determine that ammunition is carried in accordance with the Hazardous Materials Regulations in Title 49 Parts 171, 172, and 173 of the CFR.

Inasmuch as there is no evidence indicating a need for this added provision, and its implementation would impose an additional unnecessary cost on certificate holders, this proposal is withdrawn.

*Proposal 29.* This proposal would relieve an unnecessary burden on certificate holders that do not have clerical staffs working holidays and weekends by revising § 121.703 to change the reporting time to 9:00 a.m. the second workday following the date of the reportable event for reports covering holidays and weekends. No comments were received on this proposal. Accordingly, this proposal is adopted without substantive change.

*Proposal 30.* Part 129 prescribes rules governing the operation within the United States of aircraft of foreign air carriers holding a permit issued by the Civil Aeronautics Board (CAB) under Section 402 of the Federal Aviation Act of 1958. Currently, the CAB issues exemptions to permit temporary operations by foreign air carriers without a Section 402 permit provided the foreign air carrier is in compliance with Part 129. This proposal would amend § 129.1 of the FAR to make Part 129 applicable to foreign air carriers who hold either a Section 402 permit or other appropriate economic authority, or an exemption issued by the CAB which requires compliance with that Part. No comments were received on this proposal.

The phrase "conditioned upon the foreign air carrier complying with the requirements of the Part" is ambiguous since Part 129 applies regardless of CAB conditions shown on the economic authority to operate in the United States. Accordingly, this section has been amended and adopted without substantive change.

*Proposals 31 and 32.* These proposals were disposed of in Amendments 135–13(46 FR 28301; May 26, 1981) and 135–15 (46 FR 30968; June 11, 1981).

## Editorial Corrections

Amendments to §§ 107.13(a) and 121.575 were not proposed in Notice 80–23. They are editorial corrections which are necessary and resulted from new Part 108, Airplane Operator Security (46 FR 3782; February 15, 1981).

These amendments correct §§ 107.13 and 121.575 by inserting the appropriate reference to the new Part. No substantive change is made as a result of the corrections.

regulations deemed necessary for safety. The FAA's evaluation of the changes to Parts 23, 25, 45, 61, 63, 65, 91, 107, 121, and 129 indicates that the benefits will exceed the costs, primarily because the complexity and volume of regulatory material have been reduced. Further, proposals contained in the notice which have potential for placing a regulatory burden on the public have been removed. Therefore: (1) it has been determined that this is not a major regulation under Executive Order 12291; and (2) I certify that, under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantial number of small entities. In addition, the FAA has determined that these amendments are not significant under the Department of Transportation Regulatory Policies Procedures (44 FR 11034; February 26, 1979). The impact of this rulemaking is so minimal it does not require a final regulatory evaluation since most of the amendments are merely editorial corrections and clarifications and some have minimal regulatory and beneficial economic impact.

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## Amendment 129–13

## Use of X-Ray Systems

**Adopted: May 28, 1985** **Effective: July 22, 1985**

**(Published in 50 FR 25654, June 20, 1985)**

**SUMMARY:** This amendment revises the language of signs required to be posted in a conspicuous place that notify passengers that an x-ray system is being used to inspect carry-on baggage in accordance with required security programs. It also adopts a new standard for testing the effectiveness of these x-ray systems. A more realistic standard will result with the adoption of the revisions, one that will enhance overall security by requiring the x-ray systems to comply with a more realistic imaging standard and at the same time protect film and photographic materials.

The incorporation by reference of American Society of Testing and Materials Standard F792–82 listed in the regulations is approved by the Director of the Federal Register as of July 22, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. Theofolus P. Tsacoumis, Aviation Security Division (ACS–160), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–2817.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 22, 1984, the Federal Aviation Administration (FAA) issued notice of proposed rulemaking (NPRM) No. 84–8(49 FR 24974; June 18, 1984) pertaining to the use of x-ray systems by domestic, flag, and foreign air carriers and by commercial operators of large aircraft engaging in common carriage. This notice proposed the revision of the language of signs that notify passengers that an x-ray system is being used to inspect carry-on baggage in accordance with required security programs. The NPRM recommended that the signs be changed to read "Remove x-ray, scientific, and high-speed film." The notice also proposed the adoption of a new standard for testing the effectiveness of x-ray systems. The new standard uses a step wedge specified in American Society of Testing and Materials (ASTM) Standard F792–82. In addition, the notice proposed to extend the rule to cover x-ray systems that are used to process checked baggage. Also proposed was a correction to an editorial error in § 108.17(a)(4) in that the dosimeter provided to each operator is a "personnel" dosimeter, not a "personal" dosimeter. Notice 84–8 solicited comments with respect to these proposals. Comments were also requested concerning any increase in the number of searches by hand that might occur and any other burden that might be caused by this proposal.

that the high-speed film removal language will be deleted. This manufacturer also recommends that the proposed rule be modified so that any scanning-type x-ray system currently in use but unable to meet the imaging requirements of the step wedge specified in ASTM Standard F792–82 will be modified so as to meet the imaging requirements or be removed from service.

Another manufacturer expresses concern that requiring advice on signs to ''remove x-ray, scientific, and high-speed film'' would cause the certificate holders undue hardship. In addition, this manufacturer states that the FAA should distribute or sell the required step wedge to the certificate holders since they believed that a competitor would have an unfair advantage.

One film manufacturer, while expressing gratitude for the positive steps and concern demonstrated by the FAA relative to high-speed film, recommends development of a new sign that is larger and contains bigger and bolder lettering for prominent placement in the entranceways to airport x-ray screening checkpoints. The commenter also recommends development of a special warning decal which would be placed on all x-ray systems in bold, 2-inch-high lettering to state ''Remove all x-ray, scientific, and high-speed film (ISO 1000 or higher) from baggage.'' in addition, the commenter requests that all airport x-ray inspectors verbally ask travelers to remove high-speed film from their baggage. A committee of photographers endorses the comments of this film manufacturer. In addition, the commenter submitted the following recommendations: (1) Checkpoint operator training: have inspectors ask if travelers are carrying high-speed film and have them advise travelers that they should remove any film from hand luggage before passing through x-ray checkpoints if they are going through more than one airport; (2) Public education program: inform travelers that x-ray screening can damage high-speed film and have airlines provide a ticket stuffer telling passengers about x-ray damage to film or disseminate information through travel agencies; and (3) FAA develop a better sign with large, bold lettering.

The FAA has determined that the proposed requirement to advise passengers to remove all x-ray, scientific, and high-speed film from carry-on and checked articles prior to x-ray inspection (without regard to radiation levels) and to remove all film from carry-on and checked articles in the event radiation exposure exceeds 1 mR is adequate to protect photographic film from being adversely affected by radiation. No problems have been encountered with this requirement since the original x-ray rule became effective. Experience since ''paste-on'' stickers were put into use during May 1983, advising persons to remove ''high-speed'' film, has not revealed any substantiated incidents of damage to film as a result of its being exposed to an x-ray system utilized under §§ 108.17 and 129.26 of the FAR. Experience has also shown that, since the ''paste-on stickers'' have been utilized, the additional number of hand searches caused by these signs has not created a significant burden.

In addition, signs advising passengers about x-ray inspections should be as uniform as possible. Under the current rules, all certificate holders may use an identical sign unless a carrier utilizes a system emitting more than 1 mR of radiation. In such case, passengers must be advised to remove *all* film prior to inspection rather than just x-ray, scientific, and high-speed film. Since to our knowledge all systems currently in use in the United States emit less than 1 mR and many are in the 0.15 to 0.30 mR range, virtually all certificate holders use a standard sign supplied to them by the FAA. Even though, as indicated by one commenter, some machines may subject film to as little as .01 mR, industry concerns over damage to x-ray, scientific, and high-speed film warrant a uniform requirement for these signs.

With regard to signs, the FAA intends to study how the sign may be improved so as to properly highlight and prominently display the required information at screening stations that utilize x-ray baggage inspection systems. The FAA will consider the views of such organizations as the Air Transport Association, the American Association of Airport Executives, and the Airport Operators Council International. It is intended that a new sign will be developed that would enhance the notice now being given to the traveling public concerning their photographic equipment and film.

One individual is concerned that the requirement to inspect physically photographic equipment and film packages upon request be continued. Another individual suggests that the FAA be more specific with the term ''high-speed film,'' while a third individual agreed with the proposal but suggested a change in language to read ''Remove x-ray, scientific, and all camera film.'' A fourth individual commented

X-ray baggage inspection systems to process carry-on baggage and items have been in use since 1973. The FAA is not aware of any specific instance of any damage to ordinary film caused by x-ray systems used in the United States that is substantiated by factual evidence. Therefore, it is not necessary to remove all camera film before x-ray examination. In addition, the FAA required that these x-ray systems meet the Food and Drug Administration requirements specified in 21 CFR 1020.40. To our knowledge, there have been no instances where these systems had excessive leakage or the operators received an excessive dose as measured by the dosimeters each operator is required to wear. Therefore, there is no need to remove x-ray systems from all airports.

A trade association representing many of the major film manufacturers suggests that the sign posting requirements be modified so that the signs must be posted not only in a conspicuous place, but also at or near the x-ray systems and at the checked baggage stations as well. The commenter favors adoption of ASTM Standard F792–82. Another association recommends that the term "checked articles" be used in lieu of "checked baggage" and that the FAA should allow the use of x-ray systems at any location as long as they meet the current imaging requirements. An objection was raised concerning the FAA's intention of requiring a step wedge at each station utilizing x-ray baggage inspection systems. This association concurs with the language proposed, namely "Remove x-ray, scientific, and high-speed film," and indicates that the additional number of hand searches caused by this advice had not created a significant burden. A third association suggests removing ambiguous wording such as "ordinary undeveloped film" and "high-speed film" and substituting the phrase "inspection may affect film" to properly inform the traveling public.

The FAA believes the regulation should continue to require only that the sign be "posted in a conspicuous place." It will continue to consider what locations are appropriate and so advise the air carrier. The FAA is adopting the suggestion that "checked baggage" be changed to "checked articles."

One commenter expressed concern that a step wedge would be required at each screening station. However, this is not required by the regulation. Nevertheless, since x-ray systems must meet the specified imaging requirements, it is not unreasonable to expect that carriers will want to have a step wedge at each screening station, so that FAA inspectors and airline representatives can quickly determine if the x-ray system meets these imaging requirements. It is not necessary to substitute the phrase "inspection may affect film" since, as previously stated, the FAA is not aware of any substantiated damage caused by x-ray systems.

## Discussion of the Amendments

As proposed in Notice 84–8, §§ 108.17 and 129.26 are being amended to extend their application to checked baggage as well as carry-on items since certificate holders from time to time utilize x-ray imaging systems to inspect checked baggage; to adopt the language of previously produced and distributed paste-on stickers stating "Remove x-ray, scientific, and high-speed film;" to adopt a new imaging standard; and to correct an editorial error in § 108.17(a)(4) involving the misuse of the term "personal" dosimeter. Another editorial change is being made by replacing the word "will" in § 108.17(a)(4) with "shall." This will clarify the mandatory nature of the provision and conform to language used throughout the Federal Aviation Regulations.

The FAA proposed in Notice 84–8 to establish a new imaging standard for inclusion in the airline standard security program and included such a standard as part of the proposed rule. Specificity regarding the imaging standard has been eliminated from the rule as adopted to prevent access by persons attempting to frustrate the system. The standard is being placed in the air carrier standard security program of domestic and flag air carriers. The same standard will be separately specified in a letter to foreign air carriers.

To reduce any possibility of confusion and to preclude a recurrence of past incidents, the FAA is adopting a suggestion from one of the commenters by inserting the word "individual" in front of "personnel dosimeter" in § 108.17(a)(4). This should make it clear to everyone concerned that the dosimeter must be assigned to one person and should not be given to others.

quantifiable, exceed the costs.

The amendment relating to improved testing of x-ray systems will impose an additional cost of about $100 per new x-ray system for the step wedge device. In addition, the amendment will effectively prohibit the sale of used equipment that does not meet the new performance standards. About 15 percent of the 830 installed x-ray systems might not meet the new test standards, and of those about 25 percent might have been made available for sale as used equipment for up to $10,000 per system. Therefore, the potential sales loss is estimated to be $300,000 over a period of 5 to 10 years.

The benefits in terms of improved detection of forbidden items and the resultant reductions in hijackings and attendant casualty loss are difficult to quantify because they require estimating the number of forbidden items that would be detected by the new, but not the old, x-ray machines and the probabilities of such items being used in successful hijackings. Clearly, only one hijacking resulting in an accident need be prevented or, for that matter, only one life saved for the benefits to exceed the costs; therefore, it is the FAA's judgment that, on balance, the rule is beneficial.

There were no comments relating to the costs and benefits of these amendments.

## Trade Impact

Since these amendments are applicable only to U.S. airports and both foreign and domestic manufacturers of x-ray systems will have to meet the same requirement, there is no trade impact. There were no comments relating to trade impact.

## Recordkeeping/Reporting Requirements

The recordkeeping requirements contained in § 108.17 have previously been approved by the Office of Management and Budget under OMB Control Number 2120–0098.

## Conclusion

This amendment does not impose requirements that would result in any significant burden on the aviation community. Airport signs already contain the proposed language. The improved x-ray systems would impose a small additional cost of about $100 per new x-ray system, and, in some cases, replaced equipment could not be resold for aircraft baggage inspection. The additional costs are far outweighed by saving passengers the cost of damaged film, improved detection of forbidden items, and the resultant reductions in hijackings and related costs. Further, the cost of an improved x-ray system would not be incurred until a new system is installed or the old system is replaced. For these reasons, and because there are no related cost savings to small entities, I certify that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities. In addition, for the same reasons, it has been determined that the amendment does not involve a major regulation under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this section is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

## The Amendments

In consideration of the foregoing, §§ 108.17 and 129.26 of the Federal Aviation Regulations (14 CFR 108.17 and 129.26) are amended effective July 22, 1985.

*Authority:* Secs. 313(a) and 601, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) and 1421); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

of noncommon (private) and common-carriage operations. These amendments are necessary to upgrade certain regulations regarding the leasing of U.S.-registered aircraft by foreign persons and to clarify the inspection and maintenance requirements applicable to foreign persons conducting private and common-carriage operations with U.S.-registered airplanes.

**FOR FURTHER INFORMATION CONTACT:** Messrs. David L. Catey, Manager, Project Development Branch (AFS–240), Air Transportation Division, telephone (202) 267–3747; or Bob Baker, Manager, Project Development Branch (AFS–360), Aircraft Maintenance Division, telephone (202) 267–3788, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

## SUPPLEMENTARY INFORMATION:

### Background

On October 9, 1980, Part 125 of the Federal Aviation Regulations (FAR) was published in the Federal Register (45 FR 67214). With certain exceptions, not germane to the current discussion, Part 125 up to now has applied to the operation of all U.S.-registered airplanes having a passenger seating configuration of 20 or more, or a maximum payload capacity of 6,000 pounds or more, unless they are required to be operated under the rules of Part 121, 135, or 137 of the regulations.

Although Part 125 was not intended to provide acceptable safety levels for common-carriage operations, the inspection programs and maintenance requirements of § 125.247 currently apply to U.S.-registered airplanes operated outside the United States by foreign persons. This results because Part 125 governs operation of a U.S.-registered airplane of the prescribed size unless that operation is required to be conducted under the rules of Parts 121, 135, or 137. Accordingly, up to now there has been no exclusion from Part 125 for operators under Part 129—Operations of Foreign Air Carriers.

At the time Part 125 was published, the FAA was considering rulemaking to revise Part 129 to cover inspection and maintenance requirements for U.S.-registered aircraft. Requiring foreign air carriers to comply with Part 125 immediately was deemed inappropriate in light of the possibility of change to Part 129. Consequently, in adopting Part 125, the agency established a deferred compliance date of January 1, 1983, for foreign air carriers. By Amendments 125–4 (47 FR 44718; October 12, 1982), 125–5 (49 FR 34815; September 4, 1984), 125–6 (51 FR 873; January 8, 1986), and 125–7 (52 FR 6956; March 6, 1987), the agency extended the January 1, 1983, compliance date to September 1, 1984, February 28, 1986, February 28, 1987, and February 29, 1988, respectively, to provide sufficient time for completion of this rulemaking.

Subsequent to the adoption of Part 125, the agency has carefully monitored the operating experience of large U.S.-registered airplanes operated under Part 125. The operating experience can be divided into two main areas of interest. First, the frequency with which foreign air carriers operate U.S.-registered airplanes under lease has shown a marked increase. These lease agreements are desirable since they provide a means for U.S. air carriers to arrange for use of these airplanes during periods of reduced traffic levels. The second area concerns the distinction between common carriage and noncommon carriage operations.

Most foreign air carriers and foreign persons engaged in common-carriage operations have aircraft maintenance program requirements adopted by their domestic governments which are consistent with the international standards in Part I of Annex 6 to the Convention on International Civil Aviation Organization (ICAO). ICAO, Annex 6, requires each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the aircraft in an airworthy condition. To meet these requirements, each foreign operator of a U.S.-registered aircraft used in common carriage must ensure that the aircraft is maintained by a qualified organization with a well-trained staff and adequate workshops, equipment, and facilities. That organization must also have appropriate maintenance manuals, records, and procedures regarding training, inspection, and release of the aircraft. However, some countries may not have requirements completely consistent with the ICAO aircraft maintenance program requirements. This means that

sole exception to the principle that Part 125 is intended to apply only to noncommon carriage to date has been the case of a foreign person common carrier compelled to operate under the rules of Part 125 by operating a U.S.-registered airplane of the size covered by that part. These amendments eliminate that exception by expanding Part 129 to apply to each foreign operator of a U.S.-registered aircraft engaged in common carriage operating either into and out of or wholly outside the United States.

On December 10, 1985, the FAA published Notice No. 85–24 (50 FR 50588; December 10, 1985) to resolve the issues discussed above. The public comment period closed on April 10, 1986.

## Analysis of Comments

Seven public commenters responded to Notice No. 85–24. Two commenters supported the proposals to preclude the commingling of noncommon (private) and common-carrier operations. No comments were received with respect to the operational as opposed to the airworthiness and maintenance proposals of Notice No. 85–24. Thus, to preclude the commingling of noncommon (private) and common-carriage operations, new §§ 121.3(i), 125.11(c), 129.1(b), 129.11(a)(4) and (c), 135.11(c), and a new paragraph 5 of Section V. A., of paragraph (b) of Appendix A of Part 129 are adopted as proposed. Also, the proposals to revise §§ 125.1(a) and (b)(1), (3), and (4), 129.1(a) and 129.11(a) are adopted as proposed.

Section 125.1(d) is removed because the cutoff date of January 1, 1983, is obsolete, and the reference to paragraph (d) is also removed from § 125.1(a).

Proposed § 125.11(a) is revised by replacing the words "is authorized to operate aircraft under an operating certificate or operations specifications" with the words "holds the appropriate operating certificate and/or operations specifications necessary to conduct operations." This revision is consistent with terminology used in SFAR 38–2. Proposed § 125.11(a) is adopted with this modification.

Several commenters recommend that proposed § 129.14(b) be revised to require a maintenance program that would be equivalent to the continuous maintenance program required for Part 121 air carriers. It was suggested that a more specific reference is needed to address the significant maintenance aspects of Part 121 which would clearly exclude an obligation for the foreign air carrier to follow other certification requirements of Part 121 or 135. To the same general effect is the suggestion of another commenter who proposes a change to language in proposed § 129.14(b) to require that the program selected meet the requirements consistent with § 121.367 or 135.425 as appropriate. The FAA does not agree with these suggestions. A primary objective of the amendment is to require that a U.S.-registered aircraft leased by a foreign person be maintained in accordance with maintenance standards that are consistent with the requirement of the country which is a member of the International Civil Aviation Organization. The FAA considers it would be inappropriate to specify all the applicable FAR sections or to limit an operator's maintenance program requirements to those two sections because an acceptable maintenance program must be in compliance with numerous other sections of Parts 121 and 135, as appropriate.

Another commenter questions who would be responsible for airworthiness control when a foreign operator under Part 129 operates a U.S.-registered aircraft. Proposed § 129.14(a) and (b) would require each foreign person who operates a U.S.-registered aircraft in common carriage to meet prescribed maintenance requirements. Aircraft maintenance programs which are consistent with the international standards in Part I of ICAO Annex 6 require each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the aircraft in an airworthy condition. The Federal Aviation Regulations prescribe airworthiness standards for all U.S.-registered aircraft operating within or outside the United States, irrespective of the person operating the aircraft. This includes U.S.-registered aircraft operated by a foreign air carrier or foreign person.

The FAA has further reviewed the maintenance requirements proposed in § 129.14(b) and the comments received concerning the proposed wording of that paragraph. As written, the proposal creates a misunderstanding as to what would constitute an acceptable maintenance program as required by proposed 129.14(a). In addition, proposed § 129.14(b) would have provided that U.S.-registered aircraft operated by foreign persons would be adequately maintained in accordance with either Part 121 or Part 135, without regard

Two commenters recommend that the maintenance rules of Part 43 be revised to include reference to Part 129. The FAA agrees and has adopted this recommendation by amending § 43.13(c).

## Regulatory Evaluation

Two commenters support the proposed sections that would preclude the commingling of noncommon to U.S.-registered aircraft operated by foreign persons. Section 129.(a)(4) will impose only a minimal cost by requiring that the registration markings of each U.S.-registered aircraft be listed on the foreign carrier's Part operations specifications.

Two commenters support the proposed sections that would preclude the commingling of noncommon (private) and common-carriage operations, and no opposing comments were received. A minimal cost may result from the adoption of these amendments. A remote possibility exists that one or several transport category aircraft may be currently listed on both a Part 125 (private-carriage) operations specifications and either a Part 121, Part 129 or Part 135 (common carriage) operations specifications. Although such simultaneous listing of an aircraft on both private- and common-carriage operations specifications is contrary to current FAA administrative practices, a minimal cost may be incurred by the FAA and a few aircraft operators to delist an aircraft from either the private-carriage operations specifications or the common-carriage operations specifications. In addition, the few operators who may be using the same aircraft in private- and common-carriage operations under a simultaneous listing may lose some utilization of their aircraft as a result of this rule. Any costs that would be incurred are expected to be very minor, however, because of the very limited extent of this practice.

New § 129.14(b) provides for the use of a minimum equipment list by a foreign air carrier or foreign person using any U.S.-registered aircraft in common-carriage operations. The provisions of § 129.14(b) are more explicit and appropriate to common-carriage operations than the minimum equipment list requirements provided in § 91.30, which were reinstated effective March 13, 1986 (50 FR 51188; December 13, 1985), in Amendment 91–192. Both Amendment 91–192 and these amendments preclude the necessity for exemptions, thereby reducing the administrative burden of both foreign air carriers and the FAA.

## Conclusion

These amendments will facilitate the agency's maintaining distinctions among Parts 91, 121, 125, 129, and 135 of the regulations so that all U.S.-registered aircraft meet appropriate standards applicable to the type of operations (air transportation versus other air commerce) being conducted. They also provide for minimum equipment list use by foreign air carriers and other foreign persons using any U.S.-registered aircraft in common carriage operations without the necessity of obtaining an exemption. These amendments will have either no impact or a small positive impact on trade opportunities of U.S. and foreign persons who may wish to enter into aircraft lease agreements. Accordingly, for these reasons and those discussed under the heading entitled "Regulatory Evaluation," the FAA has determined that these amendments are not considered to be significant under DOT Regulatory Policies and Procedures (44 CFR Part 11034; February 26, 1979) and are not major as defined in Executive Order 12291. For these reasons and because these amendments will result in negligible costs, I certify that, under the criteria of the Regulatory Flexibility Act, the amendments will not have a significant economic impact on a substantial number of small entities. The overall economic impact of this rulemaking is so minimal that it does not require a full regulatory evaluation. In addition, benefits to this agency and some foreign operators are expected to accrue from the elimination of the need for certain exemptions.

## Adoption of the Amendments

In consideration of the foregoing, Parts 43, 91, 121, 125, 129, and 135 of the FAR (14 CFR Parts 91, 121, 125, 129, and 135) are amended effective August 25, 1987.

The authority citation for Part 129 continues to read as follows:

**Adopted: August 25, 1987** **Effective: February 25, 1988**

**(Published in 52 FR 32528, August 27, 1987)**

**SUMMARY:** This amendment delays the effective date for the new requirements that U.S.-registered aircraft leased by foreign persons be maintained in accordance with acceptable maintenance standards. This amendment is necessary to provide additional time for the FAA to develop and publish advisory material for the content of the maintenance programs and procedures for their approval. This amendment does not delay the effective date of other amendments published in 52 FR 20026 (May 28, 1987).

**EFFECTIVE DATE:** This amendment delays the effective date for § 129.14 from August 25, 1987, to February 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Messrs. David L. Catey, Manager, Project Development Branch, AFS–240, Air Transportation Division, telephone (202) 267–3747; or Wayne N. Dixon, Aircraft Maintenance Division, AFS–300, telephone (202) 267–3781, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

## SUPPLEMENTARY INFORMATION:

### Background

The FAA stated in the "Analysis of Comments" section of the preamble of the final rule for Amendments 43–28, 91–201, 121–192, 125–9, 129–14, and 135–24(52 FR 20026; May 28, 1987) that specific requirements and guidance as to what would constitute an approvable maintenance program would be provided by an advisory circular. The FAA now finds that developing and processing an advisory circular in time for the August 25, 1987, effective date of the amendment is not possible and that an effective date of February 25, 1988, for the new maintenance program and minimum equipment list requirements, § 129.14 of the Federal Aviation Regulations, is needed to complete development of this material. Not adopting this amendment would impose a burden both on the foreign air carriers and the FAA because of the difficulty and expenditure of time involved in attempting to develop a program and obtain its approval with inadequate guidance.

### Reason for No Notice and Immediate Adoption

In view of the fact that Amendment 129–14 will become effective August 25, 1987, and immediate establishment of a later effective date for the maintenance program and minimum equipment list requirements is needed to allow for development of suitable guidance to effect those requirements, I find that notice and public procedure are impracticable and good cause exists for making this amendment effective in less than 30 days.

### Conclusion

This amendment will provide the time necessary for development of guidance materials for compliance with new § 129.14 of the FAR by extending the effective date 6 months. Because it will not create any additional burden on those subject to the regulation, no costs are associated with this amendment. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities because no costs are associated with the amendment. For these reasons, the FAA has determined that the expected economic impact is so minimal that a full regulatory evaluation is not warranted.

## Amendment 129–16

## Airplane Operator and Foreign Air Carrier Security Rules

**Adopted: December 18, 1987** **Effective: December 21, 1987**

**(Published in 52 FR 48508, December 22, 1987)**

**SUMMARY:** This final rule requires the application of certain security procedures to all persons entering an airport sterile area in the United States at a preboarding screening check point. These procedures are designed to prevent or deter the carriage aboard aircraft of explosives, incendiaries, and deadly or dangerous weapons. These amendments are intended to limit the application of special procedures that have allowed certain classes of individuals to enter sterile areas through screening points without inspection of their persons and accessible property. They are needed to respond to a threat to aviation security highlighted by the recent crash of an air carrier aircraft with the loss of 44 lives.

Comments must be received on or before February 21, 1988.

**ADDRESS:** Send comments on this final rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–204), Docket No. 25502, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 25502. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donnie Blazer, Domestic Civil Aviation Security Division, Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8058.

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, Docket No. 25502, 800 Independence Avenue SW., Washington, DC 20591. All comments received will be available in the Rules Docket for examination by interested persons. This amendment may be changed in the light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments on this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25502." The postcard will be date and time stamped and returned to the commenter.

#### Background

Part 108 of the Federal Aviation Regulations requires each certificate holder required to conduct security screening to prevent or deter the carriage aboard its airplanes of any explosive, incendiary, or deadly or dangerous weapon on or about any individual's person or accessible property. The certificate

Recent events have caused concern over the proper application of these procedures. On December 7, 1987, Pacific Southwest Airlines Flight 1771 apparently was caused to crash by an individual who had smuggled a gun aboard the aircraft. Forty-four persons lost their lives in this incident. While it is not yet clearly established whether the perpetrator of this crime used an air carrier employee identification card to avoid inspection of this person and property, the incident raises questions about the applicability of the screening process to airport and airline employees. Clearly proper application of the special screening procedures should prevent any unauthorized airport or airline employee from avoiding inspection of his or her person and accessible property. The FAA is particularly concerned that individuals, using real or forged identification, may attempt to similarly compromise the screening system. To ensure maximum protection of all of those involved in aviation and restore public confidence in the aviation security system, the FAA is adopting immediately rules to remove this possible abuse of the screening system.

These amendments to Parts 108 and 129 provide that all individuals who enter an airport sterile at each preboarding screening checkpoint in the United States must be inspected using procedures, facilities, and equipment designed to detect explosives, incendiaries, and deadly or dangerous weapons. In addition, all accessible property under that person's control must be inspected. These inspection procedures will be applied to all airport and airline employees. Only limited exceptions will be authorized by the Administrator.

These emergency amendments apply only to operations of certificate holders and foreign air carriers in the United States. They apply to screening at each checkpoint in the United States for which the certificate holder or foreign air carrier is responsible, even if the screening of its passengers at a specific checkpoint is conducted by another operator.

## Reason for No Notice and Immediate Adoption

These amendments are needed immediately to ensure the overall effectiveness of the aviation security regulations to meet this particular threat. For this reason, notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication is being provided.

## Economic Assessment

Because of the emergency need for this regulation and in accordance with section 8(a)(1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable. For the same reason, no regulatory evaluation has been prepared prior to publication of this final rule. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation.

Because none of the certificate holders affected by the amendment to Part 108 is a small entity and because the cost to the additional individuals submitting themselves to detection procedures is minimal, these amendments will not have a significant economic impact on a substantial number of small entities.

## Conclusion

In accordance with section 8(a)(1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security, this regulation is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 2, 1979). Since none of the certificate holders affected by the amendment to Part 108 is a small entity and since the cost to individuals is minimal, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation to be prepared for these

## Amendment 129–17

## Traffic Alert and Collision Avoidance System

**Adopted: January 5, 1989** **Effective: February 9, 1989**

**(Published in 54 FR 940, January 10, 1989)**

**SUMMARY:** These amendments require the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport type airplanes and certain turbine powered smaller airplanes. The TCAS, which uses the Air Traffic Control Radar Beacon System transponder reply from other aircraft, will provide a collision avoidance capability that operates independently of the ground-based Air Traffic Control (ATC) system, and in areas where there is no ATC radar coverage. The Airport and Airway Safety and Capacity Expansion Act of 1987 directs the FAA to require the installation and operation of TCAS in commercial aircraft flying in the United States. The intended effect of this action is to minimize the possibility of midair collisions involving air carrier airplanes.

### COMPLIANCE DATES (WHERE LATER THAN EFFECTIVE DATE):

1. *Part 121.* TCAS II requirement for operations conducted under Part 121 with more than 30 passenger seats: December 30, 1991.

2. *Part 125.* TCAS II requirement for operations conducted under Part 125 with more than 30 passenger seats: December 30, 1991.

3. *Part 129.* TCAS I requirement for operations conducted under Part 129 with 10 to 30 passenger seats: February 9, 1995. TCAS II requirement for operations conducted under Part 129 with more than 30 passenger seats: December 30, 1991.

4. *Part 135.* TCAS I requirement for operations conducted under Part 135 with 10 to 30 passenger seats: February 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Frank Rock, Aircraft Engineering Division, AIR–120, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9567.

### SUPPLEMENTARY INFORMATION:

#### Background

*Regulatory History*

On August 21, 1987, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) No. 87–8 (52 FR 32268; August 26, 1987). The NPRM proposed to amend Parts 91, 121, 125, 129, and 135 to require the installation and use of a family of Traffic Alert and Collision Avoidance Systems (TCAS) onboard certain airplanes, as follows:

| 14 CFR part | Applicability | Equipment | Compliance |
|---|---|---|---|
| 91 | All | TCAS | Voluntary |
| 121 | Large Airplanes | TCAS II/Mode S | 3 years after effective date |
| 125 | Large Airplanes | TCAS II/Mode S | 3 years after effective date |

| | | | |
|---|---|---|---|
| | | | 7 years after effective date |

All comments received in response to NPRM No. 87–8 were considered in adopting these amendments.

On December 30, 1987, the President of the United States signed the Airport and Airway Safety and Capacity Expansion Act of 1987, which, among other amendments, amended the Federal Aviation Act of 1958, Section 601, by adding a new section (f), titled "Collision Avoidance Systems." Title III, section 203 of that act states:

"(a) FINDINGS.—Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue at a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS III, to ensure the safe separation of aircraft."

"(b) GENERAL RULES.—Section 601 is amended by adding at the end the following new subsection:

(f) COLLISION AVOIDANCE SYSTEMS.—

(1) DEVELOPMENT AND CERTIFICATION.—

(A) STANDARDS.—

The Administrator shall complete development of the collision avoidance system known as TCAS II so that such system will be operable under visual and instrument flight rules and will be upgradeable to the performance standards applicable to the collision avoidance system known as TCAS III.

(B) SCHEDULE.—

The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

(2) INSTALLATION.—

The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers."

Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223, section 203 (December 30, 1987).

The FAA has informed Congress that a schedule requiring a "complete" certification of TCAS II equipment within 18 months is extremely difficult because of the different equipment manufacturer

sponders in certain airspace and terminal areas. An automatic altitude-encoding transponder, designated as Mode C (or Mode S, since all Mode S transponders incorporate this feature), provides the air traffic controller with aircraft altitude in 100-foot increments. This information is displayed on the controller's radar screen with the data block for each tracked aircraft. The information is transmitted automatically in response to radar interrogations of the aircraft's radar transponder, and no communication with the pilot is required.

In response to Public Law 100–223 and previous FAA regulatory proposals, the agency adopted Amendment 91–203, *Transponder Automatic Altitude Reporting Capability Requirement*, in June 1988 (53 FR 23356, June 21, 1988). The rule requires the use of a Mode C transponder for all operations within and above a terminal control area (TCA) or airport radar service area (ARSA); within 30 miles of a TCA or within 10 miles of certain other airports; and above 10,000 feet above mean sea level (MSL).

A TCAS II or III unit receives information from the Mode C transponder on a target aircraft. The TCAS unit processes the information to provide the pilot of the TCAS airplane with altitude information on potentially conflicting aircraft and to provide vertical resolution advisories (RAs) (to climb or descend) to avoid the conflict. Mode C equipment installed on other aircraft is the only source of altitude information for a TCAS unit.

## Discussion of Comments

Seventy commenters responded to Notice No. 87–8. Thirty-three respondents favor the proposed rule to require TCAS; however, seventeen from this group expressed reservations about the phase-in period and ten stated that the final rulemaking should be postponed.

A breakout of the respondents showed the following number of commenters by interest category:

| | |
|---|---|
| Commmercial aviation—6 foreign and 13 domestic carriers | 19 |
| Public comment—7 general public, 2 state representatives, and 1 consumer group | 10 |
| Government agencies—8 foreign and 2 domestic | 10 |
| Industry governing bodies | 7 |
| Industry/technical groups | 9 |
| Associations | 8 |
| Research organizations | 2 |
| Airframe manufacturers | 4 |
| Training/educational group | 1 |
| Total | 70 |

## Phase-in Period

Thirty-five commenters expressed concern regarding the phase-in period for TCAS. Of these, 12 requested an implementation time of 4 years minimum up to 7 years, with a 5-year period as the most popular timeframe mentioned.

Four commenters wanted a uniform time schedule for installation, instead of the uneven phase-in time proposed in the NPRM.

Only one person, a state government representative, mentioned shortening the phase-in period. That commenter wants TCAS installed as soon as possible.

Three commenters, including two manufacturers, expressed the opinion that the proposed deadline could be met.

Public Law 100–223 mandated the installation and operation of TCAS II on each civil aircraft that has a passenger capacity of more than 30 seats and that is used to provide air transportation of passengers including intrastate air transportation of passengers. The FAA cannot promulgate rulemaking

considering the merits of developing a TCAS I design. One system is based on a passive design concept, another design is based on active interrogation, and a third concept is a combination of active/passive. These concepts have not been developed to a point where it can be judged whether any of the concepts will function as required. Considering the time required to develop, test, and obtain approval of TCAS I design and the time required to develop production facilities, coupled with user installation and requirements, the need to allow additional calendar time became apparent. The additional time reflected in this final rule provides for the fabrication, certification, and operational evaluation of TCAS I unit prior to installation on passenger carrying airplanes.

In consideration of the absence of an approved TCAS I system at this time, the compliance dates for TCAS I installation and operation have been extended from 5 years to 6 years for those aircraft operating under Parts 129 and 135 with 10 to 30 passenger seats. Additionally, the FAA will provide test data and certain test assistance, and will participate with interested manufacturers and users to evaluate and test TCAS I units in accordance with Technical Standard Order (TSO) C–118, and participate in a field evaluation of TCAS I units with Part 135 carriers.

Two manufacturers announced publicly at the Airlines Electronic Engineering Committee (AEEC) International Conference on TCAS Implementation, December 1 and 2, 1987, that their production of TCAS II systems can be adjusted to accommodate any air carrier installation schedules.

**Postpone Final Rulemaking**

Most commenters stated that the final rulemaking should be postponed until the results of the Limited Installation Program (LIP) system tests could be analyzed. The LIP, which continues the operational evaluation of TCAS II, requires analysis and periodic reporting to the FAA. The primary objective of the LIP is to evaluate the TCAS II preproduction units in air carrier service using line pilots. United Airlines, the first airline to apply for supplemental type certificate for installation of a TCAS II system for the LIP, completed their 6-month evaluation and currently is in the process of completing the data analysis. During the United evaluation a total of 2,066 flight hours were logged on the two TCAS II equipped airplanes. The system generated a total of 933 traffic advisories (TAs) and 68 RAs. Northwest Airlines is scheduled to begin their LIP evaluation on or about September 1, 1988. Northwest will use two MD–80 airplanes for the evaluation.

The FAA believes that any fundamental problem existing would have shown up early in the LIP program. None has to date, nor has any major problem been identified in the Piedmont Phase I or II programs. (The 5-month evaluation of TCAS II on two Piedmont Airlines B–727 airplanes between November 1981 and May 1982 is referred to as Piedmont Phase I. The primary objectives of this evaluation were to assess the operation of TCAS in an air carrier operational environment and to develop an understanding of the potential effect of alerts on air carrier flight operations, flight crews, and ATC controllers and on the frequency of alerts and the circumstances under which they occur. The operational evaluation of TCAS II on a Piedmont Airlines B–727 airplane between March 1987 and January 1988 is referred to as Piedmont Phase II. The primary objectives of this operational flight evaluation were to assess the impacts of TCAS operation on flight crew workload; evaluate the impacts of TCAS on the ATC system and individual controllers; and obtain flight crew comments on the system's design parameters, displays, and operational procedures. The evaluation was also designed to provide additional data on the frequency of TCAS alerts and the circumstances under which TCAS alerts occur, evaluate the effectiveness of the flight crew training program, and identity and resolve equipment certification issues. See NPRM 87–8).

Most non-U.S. commenters expressed varying degrees of displeasure at the proposed unilateral action of the United States to mandate the installation and use in U.S. airspace of a collision avoidance system in *the absence of internationally agreed-upon technical specifications and operational procedures*, for such an important system. These international standards, normally developed through the vehicle of the International Civil Aviation Organization (ICAO) for equipment such as this prior to introduction into the international aviation system, are designed to insure equipment interoperability and avoid equipage

in the safe and efficient use of this system internationally. United States participation in this effort has been very active and has included the FAA, the National Aeronautics and Space Administration (NASA), U.S. industry groups, and FAA's two major TCAS contractors, MITRE and Lincoln Labs. At the behest of U.S. and other participants, a concerted effort is being made by this group to complete its work at a spring 1989 meeting, at which time proposed ACAS international standards will be presented to ICAO's Air Navigation Commission and Council for final review and approval. Assuming no unexpected difficulties materialize during this review process, the most critical changes to ICAO documents—the technical ACAS equipment specifications in ICAO Annex 10—should become applicable internationally in late 1990.

Four commenters mentioned postponing the rule until after the Radio Technical Commission for Aeronautics (RTCA) Minimum Operational Performance Standards (MOPS) changes 6 and 7 were complete and Aeronautical Radio Inc. (ARINC) specifications were in final form. The RTCA MOPS, change 6, was not completed in time for publication in TSO C–119, TCAS II; therefore, the TSO references FAA Report No. DOT/FAA/SA–88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS).* When change 6 is approved by the RTCA Council, the TSO will be revised to reference RTCA DO–185 changes 1 through 6. Change 7 is not required for FAA approval.

One manufacturer recommended delaying the rule and holding the docket open until the LIP is finished and all reports are made available and the MITRE report 87W00157 is released and reviewed. The United Airlines LIP report has been completed and made available in the docket. The MITRE report 87W00157 was revised and adopted in the TSO.

Public Law 100–223, Section 203, does not permit compliance dates for TCAS II later than those adopted in this rule, and the FAA could not consider comments requesting later dates.

**Technical Discussion**

Thirty-three commenters included a discussion of TCAS, ACAS, Mode S, Mode C, or ATC technologies in their comments. Many in this group expressed the opinion that the technology still needed to be "fine tuned" before implementation. The FAA has provided for fine tuning of TCAS through the RTCA SC–147 committee working groups. The RTCA MOPS change 6 will contain additional fine tuning features, including simplification of the TCAS-to-TCAS coordination process, elimination of the advisory invalid indication, and many other recommendations.

One commenter postulated that the requirements for all aircraft to have "active TCAS systems would overload and violate the FAA's own requirement of limiting radio use for TCAS purposes to 1 percent of the total usage of the frequency that TCAS would operate on." This issue is not new. It was identified as one of the main development questions when, in 1982–84, the Beacon Collision Avoidance System (BCAS) design was extended to TCAS by increasing the ability to operate effectively under high density conditions. In the Lincoln Laboratory report that documents this development effort, "TCAS II: Design and Validation of the High-Traffic-Density Surveillance Subsystem," this issue is clearly identified (ATC–126, Feb-85, pages 2–6 to 2–9).

The TCAS II includes a provision called "Interference Limiting," the purpose of which is to insure that TCAS transmissions will not cause any degradation of any other systems operating in the 1030/1090 MHz frequency bands. During the TCAS development, it was recognized that a number of possible interference mechanisms needed to be considered: (1) reception of TCAS interrogations by transponders, (2) reception of TCAS replies by ground-based ATCRBS equipment, and (3) self-suppression of the transponders on the TCAS aircraft. It was decided to place limits on TCAS transmissions in such a way as to give TCAS a low priority in these frequency bands. In doing this, a rather severe limit of 2 percent was adopted as the maximum interference that can be contributed by all of the TCAS transmissions in a given area. The interference Limiting standards were initially determined analytically from basic principles of physics. It was found that a relatively simple model could be implemented to provide the ability to adapt to any given density of aircraft and any percentage that are TCAS equipped.

One manufacturer submitted the following comments not previously addressed.
Comment:

Equipment designs tested to date have not represented production TCAS II equipment. Representative equipment must be tested so that its acceptability in service can be assessed. Logic included in equipment tested, or to be tested (LIP), does not include corrective logic for "Altitude Crossover" or "TCAS-Invalid" deficiencies.
FAA response:

The FAA will conduct flight tests of production units to validate the corrective logic.
Comment:

Display requirements for "Glass Cockpits" will not be defined before mid-1988.
FAA response:

The FAA defined and issued display requirements for "Glass Cockpits" in an advisory circular (AC) entitled *Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders*, AC No. 20–131, October 3, 1988.
Comment:

Certification requirements, analysis, simulation, and flight test are not adequately defined, nor is a flight criticality level for TCAS II certification specified.
FAA response:

As previously mentioned, AC No. 20–131 was published on October 3, 1988. It proposes acceptable certification criteria. The TCAS II system must be certified to the essential level, and the software programs to level 2 of RTCA DO–178A.
Comment:

Certification requirements for compliance with foreign regulatory agency requirements for TCAS deactivation are unknown.
FAA response:

There is a possibility that a foreign government may request a U.S. TCAS-equipped airplane to deactivate the TCAS system, which is provided for in the TCAS equipment standards. Section 91.1 of the FAR's provides for compliance with the foreign government regulatory requirements.
Comment:

Certification requirements for U.S. carriers with airplanes dedicated to service abroad, such as Pan Am, are unknown.
FAA response:

Public Law 100–223 requires installation "on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers. . ." An air carrier operator who experiences hardship due to this regulation may petition for an exemption under section 601 of the FA Act of 1958.
Comment:

The means of providing integrated TAs and RAs on older airplanes without color weather radar displays has not been economically addressed.
FAA response:

The FAA minimum requirements specified in the TSO will require only a minimum of a three-target display. Any display beyond this minimum will be evaluated at the time of certification.
Comment:

opinion that Part 125 aircraft should be allowed to use Mode C as an alternative to the TCAS II system, as the TCAS equipment costs would be prohibitive for such a class of operator. As previously mentioned, if the Part 125 operator's aircraft is configured for 30 passenger seats or less, then that aircraft is exempt from the TCAS requirement.

### ICAO/Part 129 Foreign Carriers

The majority of comments mentioning ICAO (15) suggest that the FAA should coordinate TCAS implementation with Standards and Recommended Practices (SARPS) for international standardization. A standard for an ACAS generated by ICAO is especially important to foreign carriers. The FAA is actively participating with various ICAO technical groups through SICASP in an effort to generate this standard. The SICASP group will have been provided all FAA data concerning TCAS.

Of the comments addressing only the issue of TCAS implementation in Part 129 aircraft, two are against, two are for, and three request additional time to comply. Public Law 100–223 did not exempt foreign air carrier operations, within U.S. airspace, from TCAS II requirements. The Congressional finding states that public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States. However, the FAA is extending the compliance time from 5 to 6 years for airplanes with 10 to 30 seats. These operators may elect to install TCAS I, II, or III. If they install a TCAS II or III unit, it must be compatible with TSO C–119.

Foreign air carrier aircraft with more than 30 passenger seats will be required to have installed and operating a TCAS II system, compatible with TSO C–119, when operating in the United States after December 30, 1991.

### Upgrade TCAS II to TCAS III

In responding to the issue of upgrading TCAS II to TCAS III, most comments addressed the need for clarification. The respondents stated that the implied requirement for upgrading was questionable and should be more definitive. The upgrading has the support of one manufacturer, and another is supportive of the idea to require that TCAS III include the same operational criteria that will be used for TCAS II. One manufacturer stated that the "incentive to provide TCAS III growth is too vague to justify economic commitments."

Although the FAA has not required or proposed a compliance date for TCAS III, it will continue to develop, test, and evaluate TCAS III and provide data and technical support to RTCA for development of a TCAS III MOPS. Although the FAA may support a particular design for testing, it is more important that it fosters the development of the MOPS. The FAA continues to support a LIP for TCAS III.

Other than the air-to-air coordination logic, the manufacturer has freedom of design of the TCAS systems. The FAA agrees with the commenter who expressed concerns regarding the interoperability of TCAS II and III. The TCAS II design shall not preclude the upgradeability to, nor the interoperability of, TCAS II and III. This rule does not mandate a TCAS III system. New rulemaking would have to be initiated for the requirement of TCAS III.

### Training

Eight commenters were evenly divided concerning the need for standardized training prior to TCAS II implementation. Those who favor training requirements want training to focus on end-level performance, and do not believe that a specific technique is important. Training should focus also on difficulties involving the upgrade from TCAS II to TCAS III. The FAA intended the training requirements proposed in the NPRM to be training objectives, and the training program may not necessarily be limited to the proposed items. The training items, as proposed, appear in AC No. 20–131 dated October 3, 1988. The AC prescribes a means, but not the only means, of complying with the regulatory requirements.

the Government will be subject to product liability claims for use of TCAS equipment. Some commenters further requested that the FAA voluntarily indemnify the regulated operators from such liability.

The FAA considers the TCAS requirement similar to other operating requirements involving the use of certain equipment, and the agency does not consider it necessary or beneficial to make any special provision for liability claims against the Government or regulated operators.

**Applicability**

Thirty-six commenters addressed this issue. Four of the comments were sent by private individuals, nine were sent by foreign agencies, and the remainder were submitted by domestic (U.S.) industries. The primary concern expressed was that TCAS I should be required for Part 135 operators, but not TCAS II. Many commenters expressed the opinion that there is no justification for the use of the TCAS system over other collision avoidance systems. As previously stated, the FAA relaxed the TCAS requirement and compliance times proposed in the NPRM for Part 135 operators. Additionally, the FAA will evaluate passive/active TCAS I systems.

Foreign operators stated that it was necessary to continue to allow ATCRBS to be used, due to the cost of installing and operating Mode S, and that the installation of the TCAS system should be limited to new U.S.-registered aircraft. Many comments addressed the need for uniform installation of the TCAS system, and a few respondents expressed the opinion that Mode C should be mandatory in all aircraft.

The FAA addressed the Mode C requirement in another rulemaking action, "Transponder with Automatic Altitude Reporting Capability Requirement," Amendment No. 91–203(53 FR 23356; June 21, 1988). Mode S is a necessary component of TCAS II. The Mode S air-to-air data link provides TCAS II with the coordination procedures necessary for the proper RA in a TCAS to TCAS conflict. The TCAS I does not require a Mode S transponder to be installed.

The introduction of TCAS I and II is expected to reduce substantially the threat of midair collision. To equip only new U.S.-registered aircraft would be inconsistent with the requirements of Pub. L. 100–223 and would delay the benefits of a TCAS program. A high degree of protection can be realized for those operators with the expanded requirement for Mode C in general aviation aircraft and TCAS II in air carrier aircraft. Concerns were raised about the size, weight, and interfacing of the new equipment, and some comments cited the need to test representative equipment to assess its service acceptability. Some commenters stated that the display of aircraft was an essential component in the Minimum Equipment List (MEL). The FAA promulgates minimum standards and evaluates manufacturers' designs to those standards. Size, weight, and interface are market place decisions. Service acceptability will be assessed in that the system is compatible with other TCAS designs with respect to coordination logic and human factor considerations. The FAA evaluates the display systems for minimum requirements and functional compatibility during the certification evaluation in the aircraft.

Nine commenters expressed concerns relative to Part 125 aircraft. Four of these respondents stated that Part 125 aircraft should be exempt from the rule or be allowed to maintain the existing ATCRBS system requirements. The Congressional mandate covers all commercial aircraft with passenger seating configuration of more than 30 seats. With respect to aircraft with 30 seats or less, the FAA agrees with the comments. Under the rule adopted, those aircraft operating under the provisions of Part 125 in nonrevenue passenger service, with passenger seat configuration of 30 seats or less, will not to be required to have a TCAS system installed.

**Include All Aviation**

Fifteen commenters stated that the only way to ensure maximum effectiveness of the proposed TCAS system is to extend the requirement to include Part 125, Part 129, Part 135, and military aviation aircraft. The final rule does include aircraft operating under these parts to varying degrees, but it does not apply to military aircraft. However, the U.S. Navy is studying the feasibility of using TCAS I on military

to require TCAS and to adjust the requirement of Section 25.1309 to recognize the value of TCAS in reducing overall risk. The FAA does not believe this is necessary in that all Part 25 aircraft are not required to have TCAS II installed according to the operating rules.

### FAA Responsibility

Several comments received expressed a desire that configuration of the Collision Avoidance System (CAS) software be the responsibility of the FAA. The FAA does control the configuration of the CAS logic software by requirements in the TSO and subsequent installation approval. To change the software of the CAS logic would require the TSO holder to apply to the FAA for approval of a major change to the original approved design data. Deviations (major changes) to TSO's are only approved by the Aircraft Engineering Division of the Office of Airworthiness in Washington, D.C.

### Pilot Immunity for TCAS

There are several commenters who desire the FAA to grant blanket immunity to pilots for following or failing to follow an RA from the TCAS. The FAA cannot support this proposal from the industry for the following reasons:

(a) The pilot will always be ultimately responsible for his/her actions and must be held accountable for them. In the case of TCAS, there is no doubt that there may be instances where the pilot will be "off-altitude" in response to a TCAS-generated RA, and may indeed be involved in a near midair collision or an actual collision. During the review process of the incident, as in all incidents, all factors will be considered, including the factors that are TCAS related, and a determination made. This is the only position that the FAA can take on this matter and it must be made clear to all operators of TCAS.

(b) The FAA has never granted blanket immunity to flightcrews for any operation regardless of the criticality of that operation. There is no legal precedent for granting such broad relief from responsibility. Section 91.3 of the FAR states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." Introducing TCAS into the National Airspace System does nothing to change this regulation.

Every consideration will be given to the flightcrew in the review process for TCAS-related incidents. All factors will be thoroughly reviewed and determination made as to responsibility.

### Aviation Trust Fund

One commenter expressed the opinion that the FAA would be well advised to use the Aviation Trust Fund to upgrade and improve the existing ATC system. This comment is outside the scope of this NPRM.

### Economic Considerations

Of the 32 comments received mentioning economic considerations, only two respondents, both elected government representatives, were of the opinion that the cost involved is minimal. Most commented that the economic impact is not adequately addressed. Specific concerns voiced include those from small operators who believe they will be forced out of business, and large airlines who believe that the upgrade from TCAS II to TCAS III will be costly. As previously mentioned, the FAA relaxed the time for compliance for airplanes having a seating capacity of 10 to 30 passenger seats. This change will definitely reduce the economic impact on small operators. Four commenters proposed less costly alternate systems to TCAS.

In the NPRM the FAA agreed to consider passive versus active TCAS I systems as long as the applicant can demonstrate that the passive system provides the equivalent level of safety as active TCAS I. To date, the FAA has received no valid data to show that a passive TCAS I can meet the safety

the safety analysis done on the current altitude encoder errors would conclude safe TCAS operation.

One commenter was concerned that there was no data on the performance characteristics of TCAS 11 in high wing with engines mounted on the wing. The FAA does not have any information or data that indicates there will be any adverse effect of TCAS operation on these aircraft. However, the FAA will conduct in-service evaluations in such aircraft to obtain system performance and aircraft performance information.

One commenter, James Pope, was critical of the FAA's TCAS program and supported an ACAS unit not dependent on radar transponders. Pope alleged that 770 lives have been lost in ACAS-preventable midair collisions during the development of TCAS. This commenter asserts that NPRM 87–8 must be promptly withdrawn and immediate action taken by FAA to certify the proven and ready-to-go ACAS.

This commenter has previously made these same allegations to the FAA which were subsequently investigated on two occasions by the General Accounting Office and found to be without basis. The FAA believes that it has previously provided detailed answers to the commenter's allegations, and does not believe it is necessary to give an indepth analysis here. Anyone wishing a copy of the investigative reports can contact the person identified under the section, "FOR FURTHER INFORMATION CONTACT."

**Discussion of Rule**

The FAA currently operates a complex network of facilities and subsystems designed to ensure the safe and efficient operation of the National Airspace System (NAS). Operations within the NAS and its many components are governed by an array of Federal Aviation Regulations (FAR) and procedures. Consequently, a wide variety of facilities and services are available. Nevertheless, the primary function of separating aircraft is predicated on the fundamental concepts of ground-based control and the see-and-avoid responsibility of the flightcrew.

Under the see-and-avoid concept, the level of safety is related to the ability of pilots, individually and collectively, to detect and avoid encounters with other aircraft. Although common sense and the FAR require continuous adherence to the principles of see-and-avoid, the concept does have limitations. The pilot's ability to acquire aircraft visually on collision courses is reduced under heavy workload conditions, in areas of high traffic densities, and when the aircraft is in conditions of poor visibility.

The second fundamental concept upon which the separation of aircraft is predicated is ground-based control. Through the issuance of instructions, clearances, and advisories, air traffic controllers ensure that prescribed separation standards are applied between aircraft. Since these instructions are based on known and projected flight information, this system does not rely totally on the pilot's ability to acquire traffic visually to achieve acceptable levels of safety. In some segments of the NAS, such as terminal control areas, positive control is exercised, and operations in such airspace are conducted under ATC instructions. A terminal radar service area is an example of upgrading of the see-and-avoid concept and represents a complex control environment, since both controlled and uncontrolled aircraft are operating in the area. The overall collision avoidance system design must address the unique problems of such a mixed traffic environment.

The FAA's approach to TCAS is to encourage the development of a family of onboard collision avoidance systems, to demonstrate the operational and technical feasibility of the concept, and to support the development of national/international standards for the equipment. A principal objective of the TCAS approach is to provide a range of collision avoidance equipment alternatives for the full spectrum of airspace users ranging from small airplanes to large transport category airplanes. The TCAS Program consists of the following three program elements: TCAS I, which provides only TAs; TCAS II, which provides TAs and RAs in the vertical plane only; and TCAS III, which provides TAs and RAs in both the vertical and the horizontal planes.

On December 30, 1987, the President of the United States signed Pub. L. 100–223 which, among other provisions, amended the FA Act of 1958, Section 601, by adding a new paragraph (f) entitled

Aircraft operating exclusively under Part 91, General Operating and Flight Rules, are not required to have installed any TCAS equipment. However, if an operator or owner elects to install a TCAS unit, the system must be FAA approved and operated according to FAA prescribed procedures. The TCAS system installed must be shown to operate in the ATC system and in coordination with other FAA approved active TCAS systems.

Part 135 commuter and air taxi operators of turbine powered airplanes with 10 to 30 passenger seats will be required to install a TCAS I system to provide TAs from other transponder-equipped aircraft. These advisories should give bearing and distance from the TCAS-equipped airplane in the case where the other aircraft have only a Mode A transponder (no altitude reporting). If the intruder aircraft is Mode C- or Mode S-equipped, the TCAS I unit should also display altitude, which provides the pilot a sector both in the vertical as well as the horizontal plane to look for the threat aircraft. TCAS I, although not providing an RA, does provide sufficient alerting time for the pilot to visually acquire the threat aircraft and take evasive action if necessary. Although the RTCA MOPS has been approved for TCAS I, no system has been built to date. The FAA believes that development of collision avoidance equipment that can meet the TCAS I MOPS is well within the state of the art for equipment manufacturers and that adequate quantities to supply the commuter/air taxi fleet can be manufactured and installed during the time period prescribed.

Part 135 operators of 10 to 30 passenger seat turbine powered airplanes are required to have installed a TCAS I within 6 years after the effective date of the rule. Installation of TCAS I does not require the installation of a Mode S transponder.

Part 121 and 125 operators of large airplanes of more than 30 seats are required to have TCAS II and Mode S installed and operating by December 30, 1991. These operators may wish to upgrade to TCAS III units when they become available. Much research is necessary to develop TCAS III to the point that it can be type certificated. The ability to produce operational TCAS III units is many years away.

Part 129 foreign air carrier operators of turbine powered airplanes with passenger seating configurations of 10 to 30 are required to have installed and operating a TCAS I when operating in U.S. airspace 6 years after the effective date of this rule. Foreign air carrier operators of airplanes with more than 30 passenger seats are required to have installed and operating a TCAS II and Mode S transponder when operating in U.S. airspace after December 30, 1991. The FAA believes that this final rule will encourage affected foreign airplane operators, and their airworthiness authorities, to become familiar with the associated TSO's and RTCA documents that form the basis of approval and manufacture of a TCAS approved by the FAA. The TCAS systems approved by foreign airworthiness authorities must be compatible with and perform with the FAA-approved TCAS, transponders, and ATC system when operating in United States airspace.

Where the rules require a TCAS I or II unit, the intended minimum TCAS units are those complying with the requirements of TSO C–118 and TSO C–119 as appropriate, with the exception of Part 129 foreign air carrier operators. Where the rule specifies an approved TCAS, the installer may elect TCAS I, II, or III. Where the rule requires a TCAS II, the installer may elect TCAS II or III. There is no requirement, at this time, for the installation of a TCAS III system. The TCAS III system is being developed to enhance the basic TCAS II system by providing a more accurate surveillance capability and alternative escape maneuver selection in the horizontal plane. The FAA can envision that some operators may want to update their TCAS II units to TCAS III when available. The required TCAS III system design as will be defined in the applicable TSO and MOPS will permit the upgrading of a TCAS II unit to a TCAS III. In the applicable standards for TCAS II, whenever a choice exists between TCAS II and TCAS III elements (i.e., antenna, etc.), the TCAS III element will be specified in the TSO and MOPS. The FAA is committed to support the development of TCAS III. Any rulemaking concerning mandatory use of TCAS III will be handled separately from this rulemaking.

TCAS I). This document forms the basis of a TSO that will permit the active TCAS I to be manufactured under the TSO approval system.

The RTCA Document DO–185, Volume I and II, Changes 1 through 5, *Minimum Operational Performance Standards for Traffic Alert and Collision Avoid System (TCAS) Airborne Equipment* and FAA Report No. DOT/FAA/SA–88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS)* set forth standards for TCAS II equipment. These documents will also form the basis of a TSO to permit manufacturing under the TSO approval system. The TCAS III MOPS will be a new RTCA document separate from DO–185 but will identify a system functionally compatible and interchangeable with TCAS II. The three TCAS systems I, II, and III will be identified under the TSO system by different TSO numbers. Concurrent with the publication of this rule, the FAA is publishing TCAS I and TCAS II TSO's defining the minimum standards for such units.

While FAA research, to date, has focused on an active TCAS I, it has been suggested by some people that a passive (listen only) device may be able to meet the same objective intended by the active TCAS I units. While this regulatory action on a TCAS I TSO presupposes an active TCAS I, the FAA wishes to go on record as not being opposed to a passive TCAS I, as long as it meets the same safety objectives of DO–197.

## TCAS Training Requirements

The introduction of TCAS into revenue service need have little impact on the existing regulations regarding required crew training, and therefore should not require a change to the existing training requirements. As specified in § 121.401, a Part 121 certificate holder is required to establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of Part 121, Subpart N, and insure that each crewmember is adequately trained to perform his/her assigned duties. Section 121.401 will have the effect of requiring training on TCAS. Section 121.415(g) requires that each crewmember qualify in any new equipment, including modifications to airplanes. Section 121.407(a)(3) requires that each airplane simulator and other training device be modified to conform with any modification to the airplane being simulated.

The pilot training program for TCAS should provide the flightcrew the necessary knowledge, skills, and abilities to safely conduct TCAS operations.

## Regulatory Impact Analysis Summary

### *Introduction*

This section summarizes the cost impact and benefit assessment of the final rule to amend Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (FAR) to require the installation and use of a Traffic Alert and Collision Avoidance Systems (TCAS) in large transport airplanes and certain turbine-powered smaller airplanes. TCAS II, which uses a signal from existing transponders equipped with altitude encoding capability, provides collision avoidance guidance in the airplane independent of the ground Air Traffic Control (ATC) system. These amendments also require that all operators of TCAS-equipped airplanes have an FAA-approved training program for flight crewmembers. Finally, this rule requires that certain small aircraft be equipped with TCAS I, a simpler system providing collision alert warning but no flight guidance. The amendments are in response to legislation that mandates the FAA to require the installation and operation of TCAS in certain commercial airplanes flying in the United States.

These amendments stem from a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on August 26, 1987. Comments on the proposal were submitted by individuals, foreign and domestic air carriers, air carrier and airline pilot associations, foreign and domestic Government agencies, research and consultant organizations, avionics manufacturers, and the National Transportation Safety Board. Approximately half of the 70 respondents expressed support of the proposed rule to require TCAS. The

airplanes operated under Parts 129 and 135 having a passenger seating configuration of 10 to 30 seats, excluding pilot seats, be equipped with TCAS I under a longer than normal compliance period.

*Cost-Benefit Analysis*

Executive Order 12291 of February 17, 1981, requires that to the extent permitted by law, regulatory action not be taken unless the potential benefits to society for the regulation outweigh potential societal costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress may be said to have already determined that this final rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule be promulgated (The Airport and Airway Safety and Capacity Expansion Act of 1987: Public Law 100–223). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify taking this rulemaking action (which has already been done through congressional action), but to estimate dollar costs and benefits to promote understanding of the impact of the rule.

*Costs*

The FAA finds that the revisions to Parts 1 and 91 will have no cost impact. The amendments, however, to Parts 121, 125, 129, and 135 will cause affected certificate holders to incur costs.

The FAA recognizes that there will be costs associated with the amendments to Part 129. These costs are likely to be similar to those incurred by affected Parts 121 and 135 certificate holders, but have not been quantified because the burden of compliance will not be directly borne by any sector of U.S. society.

The methods and assumptions used in this analysis to prepare the final cost and benefit estimates for the revisions to Parts 121, 125, and 135 have been developed by the FAA. Data used to develop cost estimates at the NPRM stage of rulemaking were obtained from manufacturers, air carriers, avionics repair facilities, and industry trade associations. The FAA has updated this information and conducted additional research to respond to the comments concerning the economic impact estimates of various proposals. The information obtained has been used to formulate the final cost estimates of the rule. The cost and benefits calculated for the final rule are projected over the estimated 15-year life cycle of TCAS equipment. Therefore, this analysis compares the costs and benefits of TCAS II equipment for Parts 121 and 125 over a 15-year period of 1989 to 2003. To allow sufficient time for the development and certification, this rule does not require the use of TCAS I until 1996. Accordingly, to reflect the longer than normal compliance period, the analysis for Part 135 has been extended over the 15-year period of 1993 to 2007.

New § 121.356 will have an economic impact on the 3,365 existing airplanes expected to be in service in 1989 and 3,100 airplanes expected to be manufactured between 1989 and 2003 because these airplanes will be required to be equipped with a TCAS II system. The estimated cost of this requirement is $806.3 million in 1987 dollars and $543.0 million at a present worth discount rate of 10 percent over the 15-year period of 1989 to 2003.

The amendments to Part 121 will also require that air carriers develop and implement an FAA-approved TCAS II training program for their captains and first officers. The training program will require that air carriers install approved TCAS II aerodynamic data programs in their flight simulators and provide an additional one and a half hours of classroom instruction during initial training for their existing and newly-hired flightcrews. As part of the classroom instruction, certificate holders will be required to use a real time interactive device to complete transfer of system knowledge from the classroom to the cockpit. The estimated cost of modifying the 150 flight simulators currently in use by Part 121 certificate holders is $2.2 million in 1987 dollars and $2.0 million discounted at a present worth rate of 10 percent in the first year the rule is in effect. The cost of acquiring the small computers to be used as interactive

The addition of § 125.224 will require that airplanes with a passenger seating configuration, excluding any pilot seats, of more than 30 seats be equipped with TCAS II. The estimated cost of equipping the 22 airplanes now operating under the rule of Part 125 is $2.5 million in 1987 dollars and $2.3 over the 15-year period of 1989 to 2003.

The amendments to Part 135 will require that all turbine powered airplanes with 10 to 30 passenger seats be equipped with TCAS I. In addition, the rule will require that all operators of TCAS I equipped airplanes have an FAA-approved TCAS I training program for flight crewmembers.

The estimated cost of equipping 2,772 airplanes with TCAS I units is $34.1 million in 1987 dollars and $14.7 million discounted over the 15-year projected service life of the equipment of 1994 to 2008. The estimated cost of requiring the flightcrews of affected air taxi and commuter operators to undergo additional classroom training during the initial phase of flight training is $1.3 million in 1987 dollars and $0.7 million at a 10 percent present worth rate. Finally, affected Part 135 operators required to have an FAA-approved training program will incur a one-time cost estimated to be $1.0 million in 1987 dollars and $.9 million discounted at 10 percent the first year the rules is in effect. On the basis of the above, the aggregate impact of these amendments on affected air taxi and commuters is $36.5 million in 1987 dollars and $16 million when discounted at 10 percent over the 15-year period of 1993 to 2007.

*Benefits*

The TCAS rule is expected to provide potential benefits primarily in the form of improved safety to the aviation community and flying public. Such safety, for example, will take the form of reduced casualty losses (namely, fatalities and property damages) as the result of a lowered likelihood of midair collisions.

In general terms, the benefits of an effective airborne traffic alert and collision avoidance system in reducing the risk of midair collisions system in reducing the risk of midair collisions have been obvious for many years. As air traffic continues to increase and concentrate at terminal areas, the growing consensus of both the general public and most aviation professionals is that such a system would be a valuable safety addition. In 1987, congress determined that requiring TCAS II in most large aircraft is in the public interest. Although experienced airspace system operators also agree that the system would be beneficial, accurately quantifying benefits is difficult because (fortunately) there have been few actual Part 121 midair collisions in recent years. At the time of the notice, the FAA developed a mathematical model to assess the increase in collision risk that would result from the projected growth in aviation traffic activity. The FAA used a ''square law model'' to forecast that four midair collisions involving a large airplane and 24 midair collisions of taxi and commuter airplanes would occur if no additional safety measures were taken to offset the affects of traffic growth. Since that time, the FAA has analyzed the issue further, and has concluded that although the ''square law model'' is simple to apply and yields specific results, the air traffic control system is too complex for the model to be expected to provide reasonably accurate results. For this reason, the FAA has changed the basis of its benefits analysis for the final rule. The fact is, that given the very few midair collisions involving large aircraft that have occurred in recent years, and given the air traffic control improvements that have occurred and will occur shortly (such as new Mode C requirements), it is not possible to reasonably forecast specific numbers of future midair collisions. Also, the FAA is unable to allocate specific numbers of future midair collisions that will be avoided in the future between the new Mode C requirements and this TCAS rule. Instead of attempting to do this, the FAA has chosen to estimate a range of midair collisions that may occur. Currently, the stage is set for a midair collision only when one or both pilots of two aircraft make a mistake *and* the ATC system fails *and* TCAS fails. In the enroute system, TCAS plays a somewhat stronger role where ATC radar coverage does not exist.

The above factors tend to reduce the number of future midair collisions. On the other hand, steadily increasing traffic levels tend to increase the risk. In an attempt to estimate the range of midair collisions

1, this part of the rule is cost-beneficial throughout the range of potential midair collisions avoided. For example, in monetary terms, over the subject time period, this rule is expected to accrue potential benefits ranging between $27 million and $97 million (discounted, in 1987 dollars), compared to costs of $18 million (which included $2 million for the Mode C rule).

In view of the aforementioned discussion on benefits for Parts 121 (including Part 125) and 135, the FAA believes that a share of the potential benefits expected to accrue from implementation of this rule must be attributed to the Mode C rule, though to what extent is not known. This situation is due to the belief that the benefits of the TCAS and Mode C rules are inextricably linked.

*Comparison of Parts 121 and 135 Costs and Benefits*

Addressing only 14 CFR Parts 121 and 135 costs and benefits of this TCAS rule, the cost of compliance is estimated to be $563 million and $18 million, respectively (discounted) in 1987 dollars. The benefits of this rule, however, are difficult to quantify for two reasons. The first is associated with the uncertainty of estimating the number of midair collisions that will occur in the future absent any improvements in the airspace system over and above what currently exists. This difficulty has already been discussed at length in the detailed regulatory evaluation and the FAA has chosen to consider ranges of 2 to 7 and 4 to 14 collisions involving Parts 121 and 135 operators, respectively, may occur in the forecast period.

The second reason benefits are difficult to forecast accurately is that at about the same time this rule becomes effective a separate rule will become effective expanding Mode C requirements. Both rules are aimed at reducing the risk of midair collisions and are inextricably linked. The FAA is unable at this time to document the separate impacts of these two rules in reducing the risk.

The FAA made an earlier estimate of the dollar value benefits associated with avoiding future midair collisions as part of its evaluation of the Mode C rule. That estimate was significantly lower than the updated estimate prepared for this rule. The difference is only partly explained by the fact that the Mode C rule estimate was for a 10-year period while the estimate for this rule covers a 15-year period into the future (to allow for the relatively long periods before compliance is required).

Both evaluations used a Poisson distribution model as a basis to estimate the number of future midair collisions that might be expected in the absence of any further airspace system improvements to prevent them. In the Mode C analysis, the FAA very conservatively accepted the low side of the distribution (two accidents) in calculating benefits. However, based on the belief that U.S. commercial aircraft operations are forecast to more than double during the analysis period, the FAA now believes that a better approach is to analyze a range of values.

In view of the difficulties discussed above, the FAA believes that the most realistic approach to comparing benefits and costs is to compare the total Part 121 costs of the TCAS rule plus the Mode C rule with the full estimated range of possible Part 121 benefits. In a similar manner, total Part 135 TCAS rule plus Mode C rule are compared to the total range of Part 135 benefits.

In the case of Part 121 operator, the cost of the Mode C rule is negligible because virtually all Part 121 aircraft are already in compliance with the rule. Table 1 shows the cost of saving one life through the range of estimated Part 121 midair collisions. As indicated in the table, these cost-per-life-saved figures are based on an estimated total Part 121 TCAS cost of $563 million and no attempt was made to allocate some benefits to the Mode C rule. (A similar exercise can be performed for Part 135 from Table 1.)

| | | | | | |
|---|---|---|---|---|---|
| 6 | 12 | 621 | 83 | 880 | 20 |
| 5 | 10 | 517 | 69 | 1,120 | 70 |
| 4 | 8 | 414 | 55 | 1,480 | 120 |
| 3 | 6 | 310 | 42 | 2,080 | 290 |
| 2 | 4 | 207 | 27 | 3,280 | 550 |
| 1 | 2 | 103 | 14 | 6,830 | 1,350 |

The FAA concludes that this TCAS rule is warranted because it will contribute to an overall enhancement of transport and commuter categories airplane safety and utility which will both promote and enhance public confidence in, and utilization of, the U.S. air transportation system. Although the FAA has not yet quantified the value of public confidence in air transportation, it believes there is a very real cost to the system when public confidence is reduced through media coverage of each major midair collision tragedy. The fragility of public confidence is difficult to quantify, but the potential benefits in this regard stemming from avoidance of a major midair collision is very real and substantial. For example, the near-to-midair term loss of passenger bookings following the publicity of a midair collision is readily acknowledged within the industry. Even a special Government safety review of a particular air carrier can have a temporary adverse impact on yields. The qualitative nature of this consideration does not render it less significant as a factor in determining to proceed with the TCAS rulemaking action.

The Regulatory Impact Analysis that has been placed in the docket contains detailed information related to the potential costs and benefits of those amendments to Parts 121, 125, and 135 that are expected to accrue from implementation of this rule.

## Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. In consideration of the cost information discussion under the Regulatory Impact Analysis, the FAA concludes that these amendments to Parts 121, 125, and 135 will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that will reduce the cost of compliance yet achieve the levels of protection sought by these amendments. It can be pointed out, however, that the majority of small entities affected by this rule are Part 135 operators (small air taxis and small commuters). These small businesses will have 6 years to comply with this rule (as opposed to 3 years for Parts 121 and 125 operators). The average total cost impact of this rule on a small air taxi operator or small commuter for TCAS I units is estimated at $36,000 (or $4,700 annualized) and $76,000 (or $10,000 annualized), respectively, over the 15-year period 1989 to 2003. For Parts 121 and 125 operators, the average total cost for TCAS II units is estimated to be $734,000 (or $96,000 annualized) over the 15-year period.

## International Trade Impact Statement

These amendments will have little or no impact on trade opportunities of U.S. firms doing business overseas or for foreign firms doing business in the United States. These rules will impose the same requirements on both domestic operators under Parts 121, 125, and 135 of the FAR and foreign air carriers subject to Part 129. The cost of compliance with these rule amendments to foreign carriers flying into the United States under Part 129 is likely to be very similar to the cost incurred by domestic operators. Thus, neither domestic nor foreign air carriers will be affected disproportionately by these amendments. These rules, therefore, will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

## Federalism Implications

The regulations adopted herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory impact analysis of this final rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 91, 121, 125, 129, and 135) effective February 9, 1989.

The authority citation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

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## Amendment 129–18

## Security Programs for Foreign Air Carriers

**Adopted: March 13, 1989** **Effective: April 17, 1989**

**(Published in 54 FR 11116, March 16, 1989)**

**SUMMARY:** This final rule amends the Federal Aviation Regulations to require foreign air carriers that land or take off in the United States to submit a written security program to the FAA that is acceptable to the Administrator. The security program must describe the procedures, facilities, and equipment that the foreign air carrier will use to ensure the safety of persons and property traveling in air transportation. The final rule is needed to ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States. The final rule is intended to reduce the risk of fatalities and property damage attributable to acts of criminal violence directed against civil aviation and to prevent acts of air piracy.

**FOR FURTHER INFORMATION CONTACT:** Mr. David A. Smith, Manager, Domestic Civil Aviation Security Division (ACS–100), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3947.

### SUPPLEMENTARY INFORMATION:

#### Availability of the Final Rule

Any person may obtain a copy of the final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public inquiry Center (APA–230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

#### Background

On August 31, 1988, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) (53 FR 34874; September 8, 1988) that set forth a proposed amendment to Part 129 of the Federal Aviation Regulations. Part 129 governs the operations of foreign air carriers that hold a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by those

One comment, dated December 20, 1988, was received on December 22, 1988. All comments received by January 5, 1989 have been considered in the development of the final rule.

The largest group of commenters is that of foreign air carriers who would be affected by the proposed rule. More than 30 comments from foreign air carriers are in the docket. Several of those comments were filed on behalf of more than one foreign air carrier. A number of the comments contain virtually identical arguments, although separately filed on behalf of several foreign air carriers. These commenters generally were opposed to the proposed rule. However, several foreign air carriers expressed support for the proposed rule, although at least one of those recommended modifications to the proposal. Several others did not express any opinion on the basic concept of the proposed rule,, but suggested that changes be made to the proposed rule if issued as a final rule. Several commenters, apparently believing that the NPRM was a final rule, submitted their security program or other security-sensitive documents. The FAA did not include these materials in the docket. Letters were sent to the commenters, copies of which are in the docket, inviting comments on the NPRM. The FAA's letters indicated that material included in the docket is available to the public, a consequence that FAA believed the commenters did not realize. Indeed, public disclosure of security-sensitive material, such as an air carrier's security plan or program, would be completely inconsistent with the common goal of all participants in this rulemaking: namely, to ensure the safety of persons and property traveling in air transportation against acts of criminal violence and air piracy.

Comments were received from five individuals who are considering traveling as passengers on foreign air carrier flights operating to or from the United States. These commenters endorsed the proposal, usually with little elaboration, as a means of assuring that security measures are followed. Several of these commenters stated that foreign air carriers should follow the same security procedures as U.S. air carriers.

Another group of commenters, comprised of organizations representing various segments of the U.S. aviation community, supported the proposed rule. This group includes the Air Transport Association of America (ATA), the Air Line Pilots Association (ALPA), the American Association of Airport Executives (AAAE), and the Airport Operators Council International (AOCI), which commented on behalf of its U.S.-member airports.

Comments were received from a number of foreign governments and organizations. The British Embassy and the Embassy of Switzerland sent diplomatic notes to the U.S. Department of State for inclusion in the docket. Comments also were received from the Civil Aviation Bureau of Japan, the Department of Civil Aviation of Malaysia, the Soviet Union through the U.S. Embassy in Moscow, the European Civil Aviation Conference (ECAC), the International Air Transport Association (IATA), the Association of European Airlines (AEA), and the Air Transport Association of Canada (ATAC). This group of commenters generally were opposed, in whole or in substantial part, to the proposed rule. In particular, there was concern expressed about application of the rule to airports located outside the United States.

Finally, the docket includes a letter of inquiry about the rulemaking, a copy of a summary of the proposal published in a periodical, and a comment from an entity that operates several airports in the United States concerning the relationship of the proposal to the security requirements applicable to airport operators under 14 CFR Part 107.

The commenters addressed a variety of specific issues. However, the issues fall into two broad categories. The first category, and the one that generated the largest volume of comments, involves the proposal's impact on relationships between the United States and other countries. The specific issues in this category include the legality and consistency of the proposal with the Convention on international Civil Aviation (''Chicago Convention''), particularly Annex 17; the legality and consistency of the proposal with current bilateral air transport agreements; and the impact of the proposal on the sovereignty of countries. The second category involves issues of implementation and other specific aspects of the proposed rule. The issues in the second category include the time frames for submission and acceptance of a security program, the adequacy of the statement of need for the proposal, and concerns about the preparation and availability of a model standard security program.

First, a few commenters questioned the FAA's statutory authority to apply the proposed rule to the foreign air carrier's last point of departure to the United States. One commenter argued that sections 315 and 316 of the Federal Aviation Act apply to aviation security only at U.S. airports and do not authorize the regulation of foreign air carrier activities at points outside the United States. Other commenters, remarking upon discussion in the preamble to the NPRM, cited the International Security and Development Cooperation Act (ISDCA) for different propositions. Some argued that ISDCA failed to provide any authority for the proposed rule; others believed that the ISDCA eliminated any need for the proposed rule, and that the rule, therefore, was redundant and unnecessary.

Sections 315 and 316 of the Federal Aviation Act are specific and comprehensive and provide ample authority for the proposed rule. Section 315 provides that the FAA shall require ". . . that all passengers and all property intended to be carried in the aircraft cabin in air transportation . . . be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation" [49 U.S.C. 1356(a)]. Section 316 is even more comprehensive in scope: it provides that the FAA ". . . shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures . . . as [it] may deem necessary to protect persons and property aboard aircraft operating in air transportation." [49 U.S.C. 1357(a)].

If these sections applied only to operations at U.S. airports, as argued by one commenter, these sections would provide no authority for the FAA to regulate the security of U.S. air carriers abroad, a result clearly not intended by Congress. As another commenter rightly pointed out, the definition of the term "air transportation" is defined to include "foreign air transportation" [49 U.S.C. 1301(10)]. In turn, "foreign air transportation" is defined as "the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between . . . a place in the United States and any place outside thereof .."[49 U.S.C. App. 1301(24)]. These terms clearly indicate that sections 315 and 316 of the Federal Aviation Act were intended to apply to operations to and from the United States. The FAA, in promulgating § 129.25 in 1975, implemented these provisions of the Federal Aviation Act, and in so doing clearly expressed its understanding that the law applied to inbound operations of foreign air carriers, as well as to their operations from U.S. airports.

The FAA agrees that ISDCA does not provide specific statutory authority to require foreign air carriers to submit their security programs to the FAA for acceptance. The FAA did not cite ISDCA as statutory authority for the NPRM. The FAA, nevertheless, believes that the final rule is necessary to make Part 129 more consistent with the provisions of ISDCA. Evaluations of the effectiveness of the security measures used by foreign air carriers at the foreign airports covered by ISDCA is integral to the airport assessments required by that law. The final rule will provide an additional means of ensuring that the purpose of ISDCA is fulfilled.

Second, several commenters argued that the extension of U.S. jurisdiction to the foreign air carrier's last point of departure to the United States is inconsistent with the Chicago Convention and Annex 17 thereto. The commenters cite no specific provision of the Convention to support this contention but generally argue that the rule somehow undermines the fact that each Contracting State to the Chicago Convention has the basic responsibility for the security of all international civil aviation operations within its territory. These commenters do cite provisions of Annex 17, calling upon States to establish a national civil aviation security program to ensure the establishment of airport security programs for airports in their respective territories, and to cooperate with other States in adapting their respective national civil aviation security programs. The commenters argue that these provisions prohibit a Contracting State from exercising any jurisdiction over the security of foreign aircraft entering its territory from a foreign airport.

The FAA believes that the final rule is consistent with the Chicago Convention and Annex 17. As many commenters pointed out, Article 1 of the Convention recognizes the complete and exclusive sovereignty of each State over the airspace above its territory. An inherent aspect of this sovereignty is the right of each State to protect its inhabitants from potential threats to their safety from foreign aircraft entering its airspace from foreign locations. The very real potential exists that an aircraft that

Annex 17 to the Chicago Convention, which contains international standards and recommended practices on aviation security, does not preclude a State from requiring that foreign air carrier security programs with respect to operations into, within, and from its territory be submitted for its acceptance. On the contrary, Chapter 5 of Annex 17 specifically states that "[e]ach Contracting State shall require operators providing service to or from that State to adopt a security programme and to apply it in proportion to the threat to international civil aviation and its facilities . . ." The FAA, therefore, believes that the final rule is not only consistent with, but is contemplated by, the provisions of Annex 17.

Third, several commenters raised questions as to the consistency of the proposed rule with various U.S. bilateral air transport agreements. Those commenters argue that the air transport agreements do not contemplate one state unilaterally imposing on the airlines of another State security requirements to be implemented in the territory of that other State. Some commenters stated that the air transport agreements are even more restrictive and provide no authority for one State to regulate the security procedures employed by the airline of the other. Some commenters also believed that certain air transport agreements require governmental consultations before action may be taken to require a foreign air carrier to make changes to its security program.

The FAA is very much aware of the obligations contained in the various U.S. bilateral air transport agreements and intends that the final rule be implemented consistent with the commitments made in those agreements. U.S. bilateral air transport agreements are not identical in their provisions. There is uniformity, however, with respect to certain provisions. Among these is an obligation which tracks the obligation in Article 11 of the Chicago Convention; that is, the airlines of one contracting Party to the air transport agreement are obligated to comply with the rules governing entry into, departure from, and operation within the territory of the other contracting party. As discussed, the requirement in the final rule regarding acceptance of security programs for operations into, within, and from the United States is consistent with this universal provision of U.S. bilateral air transport agreements.

Many of these agreements also contain specific articles regarding aviation security. Some security articles contain specific language acknowledging the obligations of the airlines of one contracting Party to abide by the security requirements of the other. All of these security articles recognize the obligation of the airlines of the contracting Parties to adhere to international Civil Aviation Organization (ICAO) standards and recommended practices for aviation security. These security articles in no way detract from the ability of each Party to require compliance with these international measures by the air carrier of the other. The security articles do impose the obligation that, absent an emergency, the Parties will consult regarding possible breaches of aviation security obligations prior to either Party taking unilateral action to withhold operating rights under the bilateral air transport agreements.

Fourth, a few commenters objected to the rule on the grounds that security measures in some countries are only to a certain extent within the control of the airlines. The commenters stated that, in those countries, many aspects of aviation security, including the screening of passengers and carry-on baggage, are the responsibility of governmental authorities and that it is unfair to require those airlines to inform the FAA of all relevant aspects of the aviation security program for that airline or to hold the air carrier accountable for adherence to that program.

The FAA notes that similar objections were made when the current regulation on foreign air carrier security, § 129.25, was proposed. That regulation currently requires each foreign air carrier taking off or landing in the United States to adopt and to use a security program that meets the requirements listed in § 129.25(c) and to provide the FAA with information on its security program, if requested. For almost 14 years, the FAA has required compliance with that regulation by foreign air carriers with respect to their operations at U.S. airports and foreign airports that are a last point of departure to the United States. Foreign air carriers, with very few exceptions, have consistently complied with these requirements.

This is not surprising because the basic security requirements in the current § 129.25 are reflective of the international standards and recommended practices contained in Annex 17. The host governments of foreign air carriers that do not comply with the provisions of that section arguably would not be

civil aviation security.

The FAA believes that international cooperation is absolutely essential to combatting the continuing threats to civil aviation security. The FAA places the utmost importance on its work with other countries in the context of ICAO to achieve the highest and most effective international standards on this subject. The FAA also has worked, and will continue to work, closely with its aviation partners to improve the level of international aviation security through technical assistance and consultations. In this regard, the FAA notes that the February 15, 1989 meeting of the members of the International Civil Aviation Organization resulted in unanimous passage of a resolution calling upon all member states to intensify their efforts for the implementation of existing standards, recommended practices and procedures relating to aviation security, to monitor such implementation, and to take all necessary steps to prevent acts of unlawful interference against international civil aviation. This United Nations organization recognized that terrorism in the skies is a global threat that must be addressed independently and collectively by all nations.

The FAA does not believe that the final rule undermines any of these important international efforts. Rather, the rule is a vehicle for the FAA to fulfill its obligations under the Federal Aviation Act, the ICAO resolution, and Chapter 5 of Annex 17 with respect to the operations of foreign air carriers to, within, and from the United States. The rule will accomplish this by allowing the FAA to assure itself that these foreign air carriers are implementing security programs adequate to meet the threat to international civil aviation and its facilities. The FAA recognizes that conditions at the various foreign airports around the world are not identical and that the details of security programs for foreign air carriers will vary, depending on local conditions. In this respect, the FAA will take due regard of concerns that may be expressed by foreign air carriers faced with differing requirements under U.S. and local law. The FAA expects to work closely with civil aviation safety authorities in other countries in order to keep them advised of any proposed changes to foreign air carrier security programs. However, consistent with the provisions of Annex 17, the FAA expects that the critical requirements of § 129.25 will continue to be met by foreign air carriers operating to or from the United States.

**Rule Implementation and Other Issues**

A number of comments address the schedule for submission and acceptance of a foreign air carrier security program. The NPRM envisioned a 150-day period from publication of a final rule to the use of a security program acceptable to the Administrator. The preamble of the NPRM anticipated that the effective date of the rule would be 60 days after the date of publication. The NPRM proposed to require a foreign air carrier subject to the rule to submit its proposed security program by the effective date. The preamble further indicated that the use of a security program acceptable to the Administrator would not be required until 90 days after the effective date. (The proposed rule language is confusing with regard to the date by which a security program acceptable to the Administrator must be used by each foreign air carrier. The Federal Register mistakenly inserted "December 7, 1988," a date 90 days after publication of the NPRM, in several places in the printed NPRM in lieu of the phrase, "90 days after the effective date of the final rule," that was in the FAA's document sent for publication.)

There is support in the comments both for the proposition that the schedule is reasonable and for the proposition that the time intervals should be lengthened. The FAA is not convinced that the 150-day interval in the proposed rule, from publication of the final rule to use of a security program acceptable to the Administrator, is unreasonably short, although the interval is predicated on diligence and cooperation by foreign air carriers and the FAA.

As noted in the preamble of the NPRM, § 129.25(b) of the Federal Aviation Regulations currently requires each foreign air carrier that lands or takes off in the United States to adopt and to use a security program for each scheduled and public charter passenger operation as defined in § 129.25(a)(5) and (a)(6). The FAA does not believe that submission of the security program for acceptance by the Administrator necessarily requires anything more than identifying what is currently done by a foreign air carrier. In many cases, it may involve submitting only an existing document detailing the security

such a written document now. The FAA believes that a 90-day period between submission of a proposed security program and use of a program acceptable to the Administrator provides sufficient time for the FAA and a foreign air carrier to identify possible inadequacies and make appropriate modifications. Since the FAA will notify the foreign air carrier of the security program's acceptability, or the need to modify the program, within 30 days after receiving it, 60 days, at a minimum, will remain for further discussion and program modification.

The final rule is modified from the proposal, however, to clarify the compliance dates in the final rule and to extend the implementation schedule by 30 days. The final rule is effective 30 days after publication. A foreign air carrier must submit a proposed security program not later than 60 days after the effective date. A foreign air carrier must use a security program acceptable to the Administrator by 150 days after the effective date. Thus, the interval from publication of the final rule to use of a security program acceptable to the Administrator is 180 days. The final rule also would permit the Administrator to allow deviations from the security program submission schedule. Deviations from the 90-day advance submission requirement, for example, may be needed in some circumstances to prevent the delay or disruption of air service between the United States and a foreign country.

The statement in the NPRM that the FAA would prepare a MSSP for use by foreign air carriers in the event of the issuance of a final rule generated a number of comments. One commenter expressed concern that the MSSP would not be available in time to prepare its proposed security program. Several commenters indicated that foreign air carriers should be able to see the MSSP in order to formulate their response to the NPRM. Another commenter, presuming that FAA intended to require all foreign air carriers to conform to the MSSP, stated it would be contrary to the Administrative Procedure Act for the FAA to "promulgate" the MSSP without giving foreign air carriers the opportunity to comment on a draft. Still another commenter, anticipating that the MSSP would become the *de facto* standard, felt that the MSSP need not and should not be introduced into this rulemaking, further noting that it is premature to seek comments regarding a commitment to subscribe to such a program.

While the FAA understands the various concerns expressed by the different commenters regarding the MSSP, many comments appear to be based on misperception of the legal and practical effects of the MSSP. First, the MSSP, which will be available to foreign air carriers on or before the effective date of this final rule, is a "model" security plan. The purpose of the MSSP is to provide guidance, if needed, to foreign air carriers in preparing their proposed security programs. The MSSP itself is not regulatory. Second, as stated in the NPRM, the MSSP will meet "the requirements of the final rule and is based on the international security provisions established by ICAO" (53 FR 34875). The FAA believes that most foreign air carriers have established and carry out a security program responsive to current § 129.25 and international standards. As previously noted, the process of acceptance of security programs of foreign air carriers will provide an opportunity for the FAA to assess whether they are consistent with § 129.25 in light of all circumstances bearing on civil aviation security. Security programs may be found acceptable to the Administrator without regard to whether they are identical to the MSSP. However, for some foreign air carriers, adoption of the MSSP may be quite useful. The MSSP also may aid the drafting or structuring of portions of other foreign air carriers' proposed security programs. Third, even if the FAA intended to make the MSSP mandatory on all foreign air carriers under § 129.25, the FAA would not publish the MSSP in the Federal Register. Rather, the FAA would provide notice of the proposed action directly to affected foreign air carriers.

Except in the case of an emergency, the FAA would receive comments from the foreign air carrier or carriers before taking final action on any change to a security program previously found to be acceptable. The final rule includes the procedures in the NPRM regarding amendments to security programs, both on a nonemergency and an emergency basis [§ 129.25(e)(2) and (e)(3)]. As previously noted, the FAA intends to keep foreign civil aviation safety authorities advised of any proposed changes to foreign air carrier security programs.

Several commenters note the absence in the NPRM preamble of an expansive justification for the proposed amendment. These commenters believe that a detailed and specific statement of weaknesses

The final rule is substantially similar to the proposed amendment contained in the NPRM. The FAA has kept the basic requirement that certain foreign air carriers must submit proposed security programs to the FAA for acceptance by the Administrator. The final rule also contains the proposed procedures regarding amendment of a foreign air carrier security program, on a nonemergency and an emergency basis.

The FAA modified the proposal in several respects. As previously noted, the FAA clarified the effective date of the final rule, the date by which each foreign air carrier must submit a proposed security program, and the date by which each foreign air carrier must use the security program that has been accepted by the Administrator. The FAA also simplified the proposed regulation by directly stating the requirement that the foreign air carrier security program must be acceptable to the Administrator in § 129.25(e), the same section that addresses the procedures for acceptance and amendment of a security program. As a result of this revision, it is unnecessary to amend § 129.25(b), (c), and (d) of the regulations to include a date in these sections. This revision also eliminates any uncertainty about the status of § 129.25(b), (c), and (d), and the requirements contained on those sections, after this final rule is effective but before a foreign air carrier security program has been accepted by the Administrator and must be used by the foreign air carrier.

After reviewing the existing requirements and the proposed amendments, the FAA retained the current language of § 129.25(e) in the final rule. That section states that the FAA can request information about the implementation and operation of the security program used by each foreign air carrier. The FAA must know and understand the methods and procedures used by a foreign air carrier under the security program that was submitted and found to be acceptable. With this information, the FAA can ensure that the foreign air carrier complies with the security program that is acceptable to the Administrator.

## Economic Summary

In accordance with the requirements of Executive Order 12291, the FAA reviewed the cost impact and the benefits that may accrue as a result of promulgation of the final rule. The FAA has determined that the final rule does not meet the criteria of a "major" rule under Executive Order 12291 because it is not likely to have an annual effect on the economy of $100 million or more. A regulatory evaluation containing the FAA's estimates of costs and benefits of the final rule has been prepared and placed in the public docket.

The FAA has determined that the final rule will affect 111 foreign air carriers currently operating scheduled flights into the United States under Part 129. The final regulatory evaluation prepared for this rule states that the total cost of compliance with the requirements of the final rule to the 111 affected foreign air carriers is $749,340 in 1988 dollars. Costs associated with possible future amendments to foreign air carrier security programs are not identified here because these costs are speculative and nonquantifiable and they would be the result of actions separate from this rulemaking. An additional 200 entities, whose operations are not included in § 129.25(b), are involved in small aircraft charter and air taxi operations to the United States on a nonscheduled basis. They are not now required to have security programs, and this final rule will not require them to have security programs.

The primary benefits of this final rule will be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts, acts of terrorism, and air piracy directed against U.S. and foreign civil aviation interests. The FAA has not been able to quantitatively estimate the extent to which the final rule will be effective in deterring or preventing these acts against civil aviation. However, the FAA believes that the $749,340 estimated cost of compliance with the final rule will be fully recovered if only a single life is saved by promulgating the final rule and preventing criminal acts and terrorism against civil aviation interests. If only one fatality is prevented as a result of the requirements of the final rule during the 10-year period following implementation of the rule by foreign air carriers, the benefits of the final rule will be 1.3 times greater than the cost, assuming that the statistical economic value of a human life is at least $1.0 million, as is generally agreed by economists. Moreover, additional benefits will accrue to affected foreign air carriers based on the public perception of the additional

of small, domestic entities.

## International Trade Impact Analysis

This final rule affects foreign air carriers operating under Part 129. The average one-time cost impact of $6,750 for each of the affected foreign air carriers is considered negligible in comparison to the annual operating budgets of these carriers. Accordingly, this final rule will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

## Paperwork Reduction Act Approval

Section 129.25(e)(1) requires each foreign air carrier landing or taking off in the United States to submit a security program acceptable to the Administrator of the FAA. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping and reporting provisions contained in this final rule have been submitted to the Office of Management and Budget (OMB) for approval. Notification of the OMB approval number will be published in the Federal Register upon receipt from OMB.

## Federalism Implications

The amendments contained herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, the FAA has determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

## Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not a major rule under the criteria of Executive Order 12291. Additionally, this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11023; February 26, 1979). A regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

## The Amendment

Accordingly, the Federal Aviation Administration amends Part 129 of the Federal Aviation Regulations (14 CFR Part 129) effective April 17, 1989.

The authority citation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

tions of authority that were changed, as well as offices that were renamed or abolished and replaced with new office designations. These changes are necessary to make the regulations consistent with the current agency structure.

**FOR FURTHER INFORMATION CONTACT:** Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9683.

## SUPPLEMENTARY INFORMATION:

### Background

On July 1, 1988, the FAA underwent a far-reaching reorganization that affected both headquarters regional offices. The most significant change is that certain Regional Divisions and Offices, which formerly reported to the Regional Director, are now under "straight line" authority, meaning that these units within each Regional Office report to the appropriate Associate Administrator (or Chief Counsel) in charge of the function performed by that unit.

Within Part 11 of the Federal Aviation Regulations (FAR), various elements of the FAA have been delegated rulemaking authority by the Administrator. These delegations need to be updated. In addition, throughout the Federal Aviation Regulations references are made to offices that have been renamed or are no longer in existence as a result of reorganization.

Title 14 of the Code of Federal Regulations must therefore be amended to reflect the reorganizations and changes that have taken place.

### Paperwork Reduction Act

The paperwork requirements in sections being amended by this document have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

### Good Cause Justification for Immediate Adoption

This amendment is needed to avoid possible confusion about the FAA reorganization and to hasten the effective implementation of the reorganization. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

### Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and because it is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Amendment 129–20**

## Prohibition Against Smoking

**Adopted: February 28, 1990** **Effective: February 25, 1990**

**(Published in 55 FR 8364, March 7, 1990)**

**SUMMARY:** This rule implements the prohibition against smoking contained in Public Law 101–164 enacted on November 21, 1989. This legislation makes it unlawful for any person to smoke in the passenger cabin or lavatory of an airplane during most scheduled flight segments in the United States. The statutory prohibition applies to U.S. and foreign air carriers.

In addition to implementing the smoking prohibition, this rule amends the Federal Aviation Regulations to conform with an amendment to the Federal Aviation Act of 1958 that prohibits persons from tampering with smoke detectors installed in airplane lavatories.

**ADDRESSES:** Send comments on the rule in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 25590, 800 Independence Avenue SW., Washington, DC 20591. One may deliver comments in duplicate to FAA Rules Docket, Room 915G, 800 Independence Avenue SW., Washington, DC. All comments must be marked Docket No. 25590. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Larry Youngblut, Project Development Branch (AFS–240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3755.

## SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested persons may participate in this rulemaking by submitting written comments. All comments received, as well as a report summarizing any substantive contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

The Administrator will consider any comment received by the closing date for comments. This final rule may be amended after considering the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a pre-addressed, stamped postcard with the statement: "Comment to Docket No. 25590." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

### Availability of Final Rule

Any person may request a copy of this final rule from the Federal Aviation Administration, Office of Public Affairs, Attention: Public inquiry Center (APA–430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should be identified by the docket number of this rule. Persons interested in being placed on a mailing list for future rulemaking actions should also request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

In 1973, the Civil Aeronautics Board (CAB) issued the first rules regulating smoking aboard airplanes for passenger comfort and convenience. The CAB required U.S. operators of commercial flights to provide

In December 1987, Congress enacted Pub. L. 100–202, which amended § 404 of the Federal Aviation Act of 1958 (Act). The amendment (§ 404(d)(1)(A)) (smoking ban or ban) banned smoking in the passenger cabin or lavatory aboard domestic flights scheduled for 2 hours or less. Congress required that the ban take effect on April 23, 1988, and last for a period of 2 years.

Congress also added § 404(d)(2) to the Act which provides for a civil penalty of up to $2,000 for any passenger who tampers with, disables, or destroys a smoke detector in the lavatory of an aircraft. The civil penalty provision took effect immediately and has no expiration date.

The Federal Aviation Administration (FAA) issued a final rule implementing the 1987 statutory provisions on April 11, 1988, and published it in the Federal Register on April 13, 1988 (52 FR 12358).

## New Legislative Requirement

In November 1989, Congress enacted the Department of Transportation and Related Agencies Appropriation Act of 1990 (Pub. L. 101–164). In § 335 of the legislation, Congress amended § 404 of the Federal Aviation Act (Pub. L. 101–164). This amendment (§ 404(d)(1)(A)) (smoking prohibition or prohibition) prohibits smoking in the passenger cabin or lavatory of any scheduled airline flight segment in air transportation or intrastate air transportation, which is:

(i) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdiction;

(ii) Within the State of Alaska or within the State of Hawaii; or

(iii) Scheduled for 6 hours or less in duration, and between any point described in (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

The legislation deletes the current 2-hour smoking ban and provides that the new prohibition take effect February 25, 1990.

Under the law, smoking is not prohibited on flight segments originating or terminating outside of the United States, or on flights scheduled for longer than 6 hours in duration between Alaska and Hawaii, or on flights scheduled for longer than 6 hours in duration and between Alaska or Hawaii and any other point in the United States described in the legislation.

The smoking prohibition is contained in Title IV, § 404 of the Federal Aviation Act. Title IV governs the economic and consumer protection aspects of air transportation. It is the Office of the Secretary of Transportation that has the authority to promulgate rules under Title IV. The Secretary has decided that certain rules necessary to carry out the smoking prohibition should be administered by the FAA in addition to the Office of the Secretary, which issued its own rule separately (55 FR 4991; February 13, 1990). This decision is based on the fact that the passenger information signs, posted placards, and passenger briefings used to inform passengers of the smoking prohibition are regulated by the FAA. Therefore, the Secretary of Transportation has delegated to the Administrator some of the authority to promulgate rules that implement and enforce the statutory prohibition against smoking contained in § 404 of the Act, as amended by § 335 of the Department of Transportation and Related Agencies Appropriations Act of 1990. This delegation appears elsewhere in this publication.

## Foreign Air Carriers

Since the enactment of the legislation, many people have asked whether the smoking prohibition applies to scheduled flight segments operated by foreign air carriers. Under Pub. L. 101–164, smoking is prohibited on all scheduled flight segments in air transportation between the locations specified in the legislation, including those flight segments operated by foreign air carriers.

The legislation provides that:

the ban would apply to foreign carriers operating on any of these routes as well as to domestic carriers.

Therefore, the scheduled flight segments of foreign air carriers that are operated between the points described in the legislation are subject to the prohibition.

## Discussion of Rule

### *Scheduled Flight Segments*

To apply the current 2-hour smoking ban, the FAA had to determine which flights were ''scheduled'' flights and which flights were 2 hours or less in duration. The FAA concluded that the North American Edition of the *Official Airline Guide* (OAG) would he used to define ''scheduled'' flights and to determine the duration of flights (52 FR 12358). The rationale for using the OAG was that passengers, air carriers, and FAA inspectors should use the same resource to determine which flights were subject to the smoking ban. A comprehensive and accessible list of scheduled flights was needed and the OAG provides such a list.

Experience with the 2-hour smoking ban has shown that the OAG contains the most comprehensive and accessible listing of flight segments. For these reasons, the application and enforcement of the smoking ban has been efficient and trouble free. Therefore, the FAA will continue to use the OAG to define which flight segments are scheduled and to determine the duration of flight segments originating or terminating in Alaska and Hawaii. Thus, for the purpose of the smoking prohibition, ''scheduled flight segments'' are nonstop flights between two airports that are listed in either the Worldwide or North American Editions of the OAG. The following examples are helpful in understanding the new rule.

(1) The Worldwide Edition of the OAG lists a flight from San Francisco to Madrid, with one intermediate stop. Because there is an intermediate stop, the flight can be located in the OAG flight itinerary section. In the flight itinerary section, the flight is listed as San Francisco-Dallas-Madrid. Smoking is prohibited on the San Francisco to Dallas flight segment. Smoking is permitted on the flight segment from Dallas to Madrid because it is not between two points within the United States.

(2) The Worldwide Edition of the OAG lists a flight from Manila to New York with 3 intermediate stops. In the flight itinerary section, the flight is listed as Manila-Honolulu-San Francisco-Los Angeles-New York. Smoking is permitted on the flight segment between Manila and Honolulu. Smoking is permitted on the flight segment between Honolulu and San Francisco if that flight segment is scheduled for more than 6 hours in duration. However, if the flight segment between Honolulu and San Francisco is scheduled for 6 hours or less, smoking is prohibited. The exception to the smoking prohibition for flight segments scheduled for longer than 6 hours in duration only applies to flight segments that are between the U.S. jurisdictions described in the legislation and originating or terminating in Alaska or Hawaii, or flight segments between Alaska and Hawaii. Therefore, the smoking prohibition applies to all the remaining U.S. flight segments of this flight itinerary despite the scheduled duration of the flight segment.

The domestic flight segments in the two examples, i.e., San Francisco-Dallas, and Honolulu-San Francisco-Los Angeles-New York, appear in the flight itinerary section of the Worldwide Edition -of the OAG as intermediate stops. These flight segments also appear in the schedules section of the North American Edition of the OAG as nonstop domestic flights. A flight segment listed in either edition of the OAG, and in any section of the OAG, is a ''scheduled'' flight for the purpose of applying the smoking prohibition.

### *Part 121*

Section 121.317, Passenger Information, is amended by removing the current 2-hour smoking ban and replacing it with the smoking prohibition. The amended section provides that no person may conduct a scheduled flight segment on which smoking is prohibited unless the ''No Smoking'' passenger information signs are turned on during the entire flight segment, or one or more ''No Smoking'' placards meeting the requirements of Title 14, § 25.1541 of the FAR are posted during the entire flight segment. The

Paragraph (g) of § 121.317 is amended so passengers are required to comply with the "No Smoking" placards. Current paragraph (g) only requires passenger compliance with the lighted passenger information signs.

Paragraph (i) of § 121.317 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (i) incorporates a 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in an airplane lavatory.

*Part 129*

Section 129.29, Prohibition Against Smoking, is a new section that makes smoking unlawful during scheduled flight segments of foreign carriers in the United States between the locations specified by Congress in Pub. L. 101–164. The FAA believes that foreign air carriers can best determine how to implement the prohibition during scheduled flight segments in the United States. Therefore, new § 129.29 does not require that the passenger information signs be lighted or that "No Smoking" placards be posted during flight segments when smoking is prohibited.

The FAA encourages foreign air carriers to comment on this final rule. The FAA will consider all comments received and may amend the rule based on those comments.

*Part 135*

Section 135.127, Passenger Information, is amended by removing the current 2-hour smoking ban provision and replacing it with the new smoking prohibition. The amended section contains the same provisions as § 121.317 and will be similarly applied.

Paragraph (b) of § 135.127 is amended so passengers must comply with posted "No Smoking" placards. Current paragraph (b) only requires compliance with the lighted passenger information signs.

Paragraph (e) of § 135.127 is completely revised. The current paragraph is the expiration date of the 2-hour smoking ban. That language is deleted and new paragraph (e) incorporates the 1987 amendment to the Act which made it unlawful for any person to tamper with the smoke detector installed in any airplane lavatory.

*Compliance*

Several air carriers have asked questions regarding their role in the application of the prohibition against smoking. The FAA expects that air carriers will enforce the prohibition in a manner similar to the enforcement of the current 2-hour smoking ban. Air carriers should provide instructions to all crewmembers and other appropriate personnel regarding the procedures for ensuring compliance with the prohibition against smoking and tampering with the smoke detector. These procedures should include methods for reporting cases where passengers have violated the smoking prohibition or tampered with a smoke detector. A separate and complementary Office of the Secretary of Transportation rule (14 CFR Part 252) also requires air carriers to enforce the smoking prohibition.

**Economic Summary**

This rule incorporates the provisions of § 335 of Pub. L. 101–164 into the Federal Aviation Regulations (FAR) and, as such, is incorporated into the Code of Federal Regulations in 14 CFR Part 121, Part 129, and Part 135. The FAA's responsibility is to devise and promulgate a set of procedures to require a total prohibition on smoking in the passenger cabin or lavatory on virtually all scheduled airline flights within the United States.

Specifically, the prohibition against smoking is effective: (1) between any two points within Puerto Rico, the United States, Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other

the costs involved with this rule are minor.

Air carriers will realize savings from this rule. There will be less wear and tear on the ventilation systems in airplanes, and each airplane may have to be cleaned less often. In addition, there appear to be health benefits to nonsmoking passengers and to flight attendants from prohibiting smoking aboard aircraft.

The FAA concludes that there are benefits to both the air carriers and to a large portion of the flying public and flight attendants from prohibiting smoking on these domestic flights. As the costs of compliance are minimal, the FAA finds that this rule is cost beneficial.

## Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules which may have a ''significant economic impact on a substantial number of small entities.''

The FAA's criteria for a ''substantial number'' are a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine or less aircraft. The FAA's criteria for a ''significant impact'' are at least $3,800 per year for an unscheduled carrier, $53,500 for a scheduled carrier having airplanes with only 60 or fewer seats, and $95,800 per year for a scheduled carrier having an airplane with 61 or more seats.

As was discussed above, there is little or no cost associated with this rule. Therefore, the FAA certifies that the rule does not have a significant economic impact on a substantial number of small entities.

## Trade Impact Assessment

This rule affects both U.S. air carriers and foreign air carriers who conduct scheduled air transportation and intrastate air transportation on those flight segments described above. It does not affect either U.S. or foreign air carriers conducting flight segments that originate or terminate in a foreign country. Because the rule imposes negligible costs and impacts U.S. and foreign carriers equally in international transportation, the FAA has determined that these regulations do not have an impact on international trade.

## Federalism Implications

The regulations set forth in this amendment are being adopted pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*). That statute preempts State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this amendment does not have federalism implications warranting the preparation of a Federalism Assessment.

## Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. It is also determined that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because it involves a subject of substantial public interest. A copy of the full Regulatory Evaluation is filed in the docket.

# Amendment 129–21

## TCAS II Implementation Schedule

**Adopted: April 3, 1990** **Effective: May 9, 1990**

**(Published in 55 FR 13242, April 9, 1990)**

**SUMMARY:** This rule revises the schedule for installing Traffic Alert and Collision Avoidance Systems (TCAS II) on airplanes with more than 30 passenger seats. The TCAS II system will provide a collision avoidance capability that operates independently of the ground-based Air Traffic Control (ATC) system and in areas where there is no ATC coverage. Congress recently passed legislation permitting an extension of the schedule. This action implements the legislation, reduces the prospect that carriers will divert critical maintenance and modification resources away from other safety programs to meet the TCAS II schedule, and allows the FAA to evaluate the operation of TCAS II in the total ATC environment.

### COMPLIANCE DATES (WHERE LATER THAN EFFECTIVE DATE):

1. *Part 121.* TCAS II requirement for operations conducted under Part 121 with more than 30 passenger seats as follows:

| *DATE* | *REQUIRED* |
|---|---|
| December 30, 1990 | At least 20% of all covered airplanes, if the certificate holder operates more than 30 such airplanes |
| December 30, 1991 | 50% of all covered airplanes |
| December 30, 1993 | 100% of all covered airplanes |

2. *Part 125.* TCAS II requirement for operations conducted under Part 125 with more than 30 passenger seats: December 30, 1993.

3. *Part 129.* TCAS II requirement for operations conducted under Part 129 with more than 30 passenger seats: December 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Frank Rock, Aircraft Engineering Division, AIR–120, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9567.

### SUPPLEMENTARY INFORMATION:

#### Background

The Airport and Airway Safety and Capacity Expansion Act of 1987 directed the Federal Aviation Administration (FAA) to require the installation and operation of TCAS II in commercial airplanes operating in the United States that have a passenger capacity of more than 30 seats. Under a provision in the Act, 100 percent of this fleet was to be equipped with TCAS II by December 30, 1991. On January 10, 1989, the FAA promulgated the Traffic Alert and Collision Avoidance System rules [54 FR 940] requiring installation of TCAS II on civil airplanes, with more than 30 passenger seats, that operate in the United States. Before the final rule was published, however, the Subcommittee on Aviation of the U.S. Senate Committee on Commerce, Science, and Transportation questioned whether the aviation community had the capability to comply with the statutory schedule for TCAS II equipage. The Subcommittee asked the Office of Technology Assessment (OTA) to investigate this question, to identify other important issues raised by the final rule, and to present its findings in a report.

The OTA issued its report, ''Safer Skies With TCAS,'' in February 1989. Subsequently, the House Subcommittee on Aviation held a hearing on the report where it received testimony supporting OTA recommendations that the TCAS II implementation schedule be extended and that there be a relatively

| | |
|---|---|
| December 30, 1991 | 50% of all civil aircraft with more than 30 passenger seats operated by airlines that operate under the provisions of 14 CFR Parts 121 and 129. |
| December 30, 1993 | 100% of all civil aircraft with more than 30 passenger seats operating in the United States. |

Extending the implementation schedule enhances air safety because it helps minimize the prospect that carriers will have to choose between installing TCAS II and performing other critical fleet maintenance procedures. Further, the extension means that a carrier may install TCAS II during its regular maintenance cycle; an economic benefit will accrue to carriers as a result of reduced downtime.

On July 10, 1989, the agency published a document in the Federal Register [54 FR 28978] announcing a public meeting and inviting written submissions on these issues. On December 15, 1989, the President signed Public Law 101–236, which allows the Administrator to extend the deadline for a period not to exceed 2 years.

## Discussion of Comments

The agency received 21 comments addressing the implementation schedule for installing TCAS II and the propriety of an operational evaluation program.

## Modified TCAS III Installation Schedule

*Deadline for 100 percent equipage.* Several commenters endorsed extending the deadline for 100 percent equipage to December 30, 1993. The agency agrees that the 1993 date will accomplish several important objectives recognized in the OTA report. First, it will give TCAS II equipment manufacturers time to produce and deliver necessary equipment under the revised technical standard order (TSO), TSO C–119(a), which references Radio Technical Commission for Aeronautics, Minimum Operational Performance Standard, DO–185, Changes 1 through 6. Second, extending the deadline for 100 percent equipage will give airlines and fuselage manufacturers time to redesign and modify airplanes. Third, it will give the agency time to perform a thorough evaluation of TCAS II equipment and altered airplanes in the total ATC environment. Further, extending the deadline will minimize the economic consequences of taking part of a carrier's fleet out of service to install TCAS II, and reduce the prospect that other critical maintenance and modification programs will suffer as operators endeavor to meet the TCAS II deadline.

*Part 129 Operators.* Commenters representing Part 129 operators (foreign air carriers) opposed the 20 percent and 50 percent phase-in for installing TCAS II on foreign airplanes operating in the United States. These commenters argued that Part 129 carriers do not dedicate specific airplanes to U.S. routes. Therefore, the only way to guarantee that a given percentage of the foreign fleet would meet the TCAS II phase-in requirements is to install the system in 100 percent of the fleet, or dedicate a part of the fleet to U.S. service. They suggested further that the FAA TCAS II rule did not conform with the international Civil Aviation Organization (ICAO) schedule because the rule called for installation outside of the ICAO schedule. These commenters suggested either that ICAO set the schedule for installing TCAS II in non-U.S. registered airplanes, or that Part 129 operations be exempted from the phase-in schedule and be compelled to meet only the deadline for 100 percent equipage.

For the reasons stated by the commenters, FAA agrees that a mandatory phase-in schedule is inappropriate for Part 129 operators and has deleted this requirement from the rule. The agency has no authority, however, to exempt these operators from the 100 percent equipage deadline, because there is no discretion in the legislation to retreat from the December 1993 date for any operations to which the TCAS II rule applies.

FAA appreciates that this position does not fully accommodate an expressed concern of Part 129 operators that they may be subject to conflicting U.S. and ICAO TCAS II standards.

121 operators whose fleets contain foreign-made airplanes to comply with the phase-in schedule given that data necessary to retrofit their airplanes with TCAS II may not be available in time to meet the 20 percent and 50 percent deadlines. These commenters suggested that the modified schedule be amended so that an operator must have at least 50 subject airplanes (rather than the 30 in the proposed schedule) to trigger the phase-in requirement. The effect of such an amendment for some domestic carriers would be to exclude them completely from the phase-in requirements.

In its Report to the Senate Subcommittee on Aviation, OTA states that airlines that complete TCAS II installation on time face indirect cost penalties if their competitors do not commit similar resources to the installation of TCAS II and are granted extensions from the time deadline. FAA does not wish to penalize complying operators by effectively granting a general exemption from the phase-in requirements to some Part 121 operators. Further, in order to evaluate TCAS as a complement of the ATC system, there must be a critical number and variety of commercial airplanes equipped with TCAS II operating in all types of airspace. Because TCAS II engineering technology is developed, FAA wishes to encourage operators to obtain the necessary technical support to facilitate its installation. Most importantly, Congress has expressed its belief that aviation safety will be served best by installing TCAS II on commercial airplanes as soon as practically possible.

If the agency followed the commenters' suggestion, for some carriers, the change would amount to a general exemption from the phase-in requirements. That action would place complying carriers at an economic disadvantage by compelling them to incur costs that their exempt competitors could avoid. FAA believes that economic equity, an effective evaluation of TCAS II in the ATC environment, and Congressional objectives weigh in favor of maintaining the schedule for all subject Part 121 operators. On the other hand, the agency acknowledges that there may be circumstances where an operator cannot achieve full compliance with the phase-in requirements for reasons of impracticability. Therefore, the agency is amending the TCAS II phase-in requirements to permit waivers from full compliance where the operator makes a showing that it is impracticable to install TCAS II on each airplane falling under the phase-in percentages.

*Quantity of Seats Requirement.* One commenter suggested that carriers operating airplanes having less than 60 seats operating "exclusively in areas . . . which are free of congestion problems" be required to meet only the 100 percent equipage deadline. As this commenter suggests, however, determining what constitutes uncongested air space is difficult at best. The agency declines to introduce ambiguity into this critical program. Setting the TCAS II installation schedule by fleet facilitates program administration and adequately informs operators of whether and how they must comply.

**Operational Evaluation Program**

Five commenters endorsed the need for an operational evaluation program. One commenter suggested, however, that the evaluation consist of a minimum 25 percent of each operator's fleet, and that a required "representative" number and variety of airplanes be included in the evaluation phase.

Following the recommendation of the OTA Report, FAA intends to conduct a program during 1990, collecting approximately six months of in-use data to ensure that TCAS II will be safely and efficiently integrated into the ATC system. However, the agency declines to dictate which specific numbers and types of airplanes the carrier must equip for the TCAS II evaluation. Further, there is no need to engage in more specific instructions in order to accomplish the goal that this commenter suggests. First, a carrier logically will install TCAS II as its fleet comes in for service. Second, different operators use different types of airplanes. Therefore, both the structure of airplanes maintenance and the variety of airplanes in the commercial carrier market naturally will produce the representative mix this commenter advises. Finally, FAA used the OTA report recommendation in arriving at 20 percent as the portion of the fleet that should be equipped for the evaluation. The agency believes that this number will present a sufficient mix to conduct a useful evaluation, and declines to impose an unnecessary cost on operators by requiring any greater percentage.

raised by the revised implementation schedule are substantially the same as those involved in the original notice and the agency has considered those comments in adopting this rule. Accordingly, I find that the notice and public procedure requirements of 5 U.S.C. 556(b) have been satisfied and that further notice is unnecessary and contrary to the public interest.

## The Rule

Paragraph (a) of § 121.356 is being revised to include the compliance schedule presented above for equipping airplanes with more than 30 passenger seats with TCAS II and the appropriate class of Mode S transponder. In Part 125, § 25.224(a) is being revised to extend the compliance date from December 30, 1991 to December 30, 1993; the same revision is being made to § 129.18(a). The effect of all of these revisions is to extend the compliance schedule for 100 percent installation of TCAS II to December 30, 1993. The more detailed schedule for Part 121 certificate carriers will permit the FAA to evaluate the impact of TCAS II equipment on the total air traffic system as the equipment is being phased into that system.

## Regulatory Evaluation Summary

### *Benefit-Cost Analysis*

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs to society. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

This final rule is determined to not be "major" as defined in the executive order, so a full Regulatory Evaluation of alternative approaches has not been prepared. The FAA has, however, prepared a more concise Regulatory Evaluation, which includes an analysis of the safety and economic consequences of this rule. This analysis is included in the docket, and it quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits and impacts.

A summary of the Regulatory Evaluation is contained in this section. For a more detailed analysis, the reader is referred to the full evaluation contained in the docket.

### *Costs*

This rule extends the date by which air carrier airplanes with a passenger capacity of more than 30 seats flying in the United States must be equipped with TCAS II. Instead of all such airplanes being required to be so equipped by December 30, 1991, this amendment extends the existing deadline as follows:

- 20 percent of all such airplanes operating under 14 CFR Part 121 by airlines that operate more than 30 such airplanes must be equipped by December 30, 1990.
- 50 percent of all such airplanes operating under 14 CFR Part 121 must be equipped by December 30, 1991.
- 100 percent of all such airplanes (Parts 121, 125, and 129) must be equipped by December 30, 1993.

The primary cost of this rule is whatever reduction in aviation safety that may result from permitting 50 percent of the Part 121 fleet to delay equipping with TCAS II for 2 years or until December 30, 1993. Information received since implementation of the original TCAS final rule indicates that some air carriers could not meet the December 30, 1991, date and would require some relief. Whatever negative safety impact this rule may have is limited to that resulting from carriers delaying installation of TCAS

> deadline for the following reasons: Additional technicians will be needed for the installation work force, and the supply of trained technicians will probably not be adequate to meet all the needs for every airline. Limited ramp and hangar space and other maintenance requirements may compound the labor shortage. Additionally, support equipment that could help speed installation, such as ground testing equipment, is still being developed.

Based on the above statements from the OTA report, it appears that some carriers (especially, the smaller ones) would have been forced to request exemptions from the original deadline. The FAA cannot quantify what safety reduction may occur as a result of these air carriers who could have met the 1991 deadline delaying for up to 2 years equipping the fleets with TCAS II. When evaluating the original TCAS rule, the FAA did not separate the expected benefits of TCAS from those of the recently expanded Mode C requirements, but estimated that the future benefits over the next 15 year of the two rules together will be the prevention of a range of 2 to 7 midair collisions involving Part 121 airplanes. Two actual midair collisions involving large air carriers actually occurred in the U.S. during the past 15 years in the absence of TCAS II and the expanded Mode C requirements. Under this amendment to the initial TCAS rule, 50 percent of the Part 121 Fleet will still meet the original December 30, 1991, deadline for becoming TCAS II equipped, the other 50 percent will become equipped over the following 2 years. The expanded Mode C requirements remain in effect. The FAA expects that whatever small safety reduction may occur because of extending the deadline for one half of the Part 121 fleet will be more than compensated for by safety increases as discussed in the "Benefits Section" of this regulatory evaluation summary. Even in the unlikely event that all of the air carriers would have been able to meet the deadline, the FAA cannot estimate in definitive terms what aviation safety reduction would have resulted because of this rule.

A potential secondary cost of this rule is its impact on TCAS II manufacturers. Again, quoting from the OTA report:

> The TCAS II installation requirement has a different effect on the various U.S. TCAS manufacturers. Expecting over 6,000 orders from domestic and foreign airlines by the end of 1991, these companies have invested accordingly. Under the current schedule, airlines may postpone taking delivery of equipment until late in 1991 to allow modifications to be made before their purchases are effective. Equipment manufacturers that were not early supporters of TCAS II development may reap benefits from such postponements, while those that invested heavily in development and testing programs will face cash flow problems as they gear up for production. A simple extension of the deadline could heighten cash flow problems by further postponing purchases.

While acknowledging that TCAS manufacturers may experience some costs as a result of this rule, the FAA is unable to estimate these costs and assumes them to be minor because no TCAS manufacturers in objected to the rule at the public hearing or submitted comments to the docket on the notice.

*Benefits*

This rule is expected to generate potential benefits in the forms of enhanced safety and operational efficiency.

This rule will enhance aviation safety in two ways. First, it will ensure that at least 20 percent of the airplanes in the Part 121 air carrier fleet have TCAS II installed by December 30, 1990. Under the old schedule (or in the absence of this rule), air carrier operators (with more than 30 passenger seats) had until December 30, 1991, to install TCAS II. The FAA expects that because of the high cost of TCAS and ongoing resource needs in other areas of airline operations, some air carriers (particularly, the smaller ones) may have waited until late 1991 before installing TCAS II. The exact number of air carriers that would have installed TCAS II by late 1991, in absence of this rule, is uncertain. In view of this uncertainty, however, this rule will ensure that there will be as much as a 20 percent reduction in aviation risk exposure for Part 121 air carriers. The potential reduction in risk exposure, which would take the form of a lowered probability of midair collisions, as a result of this action

by December 1991 (instead of 100 percent under the old schedule). By December 30, 1993, all air carriers operating under Parts 121, 125, and 129 fleets are required to have TCAS II installed. This extension will better allow the airlines (especially, the smaller ones) to refrain from a "rob Peter to pay Paul" approach with aviation safety in order to achieve full compliance with TCAS II. This latter safety benefit could only be accomplished as the result of improved operational efficiency in the allocation of monetary resources. Such efficiency improvements will result in economic relief derived from the 2-year extension of the TCAS II implementation date.

As the result of the extension of the TCAS II implementation date, out-of-service (or down) time could be reduced significantly for some airlines. Now, airlines can install TCAS II in conjunction with the installation of windshear, to a large extent, during their routine 3- or 4-year heavy maintenance cycles. This economic relief benefit is the result of reduced downtime and the delay in the acquisition and installation of TCAS II for some airplanes. The quantification of these economic relief benefits is difficult because they embody much uncertainty, coupled with a lack of available information. For this reason, such benefits will not be estimated quantitatively in this evaluation.

Another potential benefit of this rule will he an earlier compatibility of U.S. and international standards. The extended TCAS II implementation schedule will better ensure that U.S. and ICAO TCAS II standards are compatible sooner than otherwise would have been in the absence of this rule. According to the OTA report, if international airborne collision avoidance standards are completed and approved as expected by mid-1990, an international implementation schedule can be then established.

*Comparison of Costs and Benefits*

Based upon information received since implementation of the original TCAS rule, the FAA deems that some air carriers could not have met the old schedule to equip their airplanes with TCAS II. In addition, those airline operators who could have met the old schedule may have been heavily pressured to cut corners on other safety initiatives in order to do so. While there may be a very small but temporary and unquantifiable increased risk of midair collisions by allowing 50 percent of the Part 121 fleet and all of the Parts 125 and 129 fleets a 2-year extension in becoming TCAS II equipped, this is more than offset by the safety benefits of allowing the extension. On balance, the FAA expects the benefits of this rule to exceed any costs that might be incurred as a result of its adoption.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities potentially affected by this rule consists of Parts 121 and 125 airplane operators with passenger configurations of more than 30 seats. According to the RFA, however, foreign entities (such as Part 129 air carriers) are not covered.

This rule will not impose any additional incremental costs, over those that would have been incurred under the original TCAS rule, on Parts 121 and 125 airplane operators. As a matter of fact, this rule will impose a lower cost of compliance than would have been incurred under the TCAS rule using the old December 30, 1991, TCAS II implementation date. Therefore, the FAA has determined that this rule will not have a significant cost impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**International Trade Impact Assessment**

This rule will have no impact on trade opportunities of United States firms doing business overseas or for foreign firms doing business in the United States. This rule will impose the same TCAS II requirements on both domestic operators under Parts 121 and 125 and foreign air carriers subject to Part 129. The incremental cost of compliance of this rule relative to the TCAS rule is zero. In fact,

The regulations herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that these regulations do not have federalism implications requiring the preparation of a Federalism Assessment.

### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Parts 121, 125, and 129 of the Federal Aviation Regulations (14 CFR Parts 121, 125, and 129) effective May 9, 1990.

The authority citation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

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## Amendment 129–22

## Foreign Air Carrier Security Program

**Adopted: June 25, 1991** **Effective: July 31, 1991**

**(Published in 56 FR 30122, July 1, 1991)**

**SUMMARY:** The FAA is amending the Federal Aviation Regulations to require foreign air carriers that land or take off in the United States to provide passengers a level of protection similar to the level of protection provided by U.S. air carriers at the same airport. To ensure that foreign air carrier security programs contain procedures which provide a similar level of protection, the Administrator could amend those programs according to the procedures in this rule. This action is needed to ensure that appropriate security measures are implemented by foreign air carriers operating into and out of the United States. This action also implements Congressional legislation enacted on November 16, 1990. The intended effect of this rule is to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States by reducing the risk of fatalities and property damage attributable to criminal acts against civil aviation.

**FOR FURTHER INFORMATION CONTACT:** Max D. Payne, Civil Aviation Security Policy and Standards Division (ACP–110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7839.

**SUPPLEMENTARY INFORMATION:**

The FAA's present Civil Aviation Security Program was initiated in 1973. Part 129 of the Federal Aviation Regulations (FAR) governs the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by DOT. The foreign air carrier security regulations were promulgated in 1976 (41 FR 30106; July 22, 1976).

The FAA issued an amendment to FAR § 129.25(e) in 1989 (54 FR 11116; March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the safety of persons and property traveling by air. The rule applies to foreign air carrier operations at United States airports and at foreign airports that are last points of departure prior to landing in the United States.

With respect to that portion of a security program dealing with airports that are identified as last points of departure to the United States, foreign air carriers may refer the FAA to the appropriate foreign government authorities that implement security procedures (54 FR 25551; June 15, 1989).

Currently, 138 foreign air carriers are required to submit security programs, and all have done so. The programs contain sensitive security procedures and are not available to the public, in accordance with 14 CFR Part 191 (41 FR 53777; December 9, 1976), which establishes the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974 (Pub. L. 93–366).

On January 29, 1991, the FAA issued a notice of proposed rulemaking (NPRM) (56 FR 4328; February 4, 1991) that set forth a proposed amendment to FAR § 129.25(e). In the NPRM, the FAA proposed to provide procedures to amend foreign air carrier security programs to ensure those programs provide passengers with a level of protection similar to that provided under the security programs of U.S. air carriers serving the same airports.

Terrorism and other criminal acts against civil aviation are global in nature. Access to the air transportation system may be attempted through airports in countries far from the terrorist's intended target where the perceived threat to that nation's interests is not high and the security measures accordingly are less stringent. To prevent terrorist acts, aviation security standards must be raised worldwide. The Secretaries of State and Transportation are committed to both multilateral and bilateral consultations and negotiations to strengthen and improve aviation security standards in all countries. The United States has already reached agreement with 57 countries on the addition of aviation security articles to their bilateral air transport agreements.

## Aviation Security Improvement Act of 1990

On November 16, 1990, the President signed the Aviation Security Improvement Act of 1990 (Pub. L. 101–604) (the Act). It permits the Administrator of the FAA to accept a foreign air carrier security program only if the Administrator determines that the security program provides passengers with a level of protection similar to that provided under the security programs of U.S. air carriers serving the same airports.

## Background of the Rule

The FAA is amending Part 129 to ensure that all foreign air carriers that land or take off in the United States adopt and use a security program that provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airport.

The FAA is also amending Part 129 to provide procedures to amend foreign air carrier security programs in the interest of safety in air transportation or in air commerce and in the public interest. The procedures for the amendment of foreign air carrier security programs closely parallel the procedures in Part 108 for the amendment of U.S. air carrier security programs. Except in an emergency, proposed

## Discussion of Comments

The FAA received comments from nine foreign air carriers one U.S. air carrier association, one foreign air carrier association, five U.S. crewmember organizations, and a United States Senator. A diplomatic note jointly submitted by 15 foreign governments was also placed in the docket. Several of the comments from foreign air carriers contained virtually identical arguments. The foreign commenters were generally opposed to the proposed rule or concerned that it could supersede the process of bilateral consultation and negotiation. Comments from interested parties in the United States generally argued that the proposed rule should be modified to require identical, rather than similar, security procedures for foreign air carriers and U.S. air carriers.

The predominant theme of comments opposing the proposed rule was the impact on relationships between the United States and other countries. Nine comments and the diplomatic note expressed concerns for the legality and consistency of the rule with the Convention on International Civil Aviation (Chicago Convention), in particular Annex 17; the legality and consistency of the proposed rule with current bilateral air transport agreements; and the possible effect on the sovereignty of foreign countries. These concerns focused pay on the application of the proposed rule to foreign air carrier operations at foreign airports.

Nine commenters argued that the rule is inconsistent with the Chicago Convention and its Annex 17. The United States has been a leader in developing the International Civil Aviation Organization's (ICAO) multilateral Security Standards and Recommended Practices, which are incorporated into Annex 17 of the Chicago Convention. These standards are continually reviewed and updated. The United States actively engages in bilateral consultations to coordinate and improve aviation security policies and procedures and attempts to resolve disagreements with foreign governments as quickly and amicably as possible.

More important, this rule is consistent with the precepts of the regime established by the Chicago Convention. Article 1 of the Convention recognizes the complete and exclusive sovereignty of each State over the airspace above its territory. Inherent in this sovereignty is the right of each State to protect its inhabitants from possible threats to their safety from foreign aircraft entering that airspace. An aircraft not subjected to adequate security controls at the last point of departure in another country may well be the target of an act of unlawful interference or sabotage, posing a hazard to the safety of the inhabitants of the country into which that aircraft operates. The Chicago Convention recognizes this fundamental right in Article 11. This Article provides that:

> "the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, . . . shall be complied with by such aircraft upon entering or departing from or while within the territory of that State."

Nothing in the rule detracts from the basic right established by the Convention.

Six foreign air carriers commented that the rule should require the Administrator to consult with foreign governments prior to, or in lieu of, amending the procedures in a foreign air carrier's security program applicable at a foreign airport. Three commenters expressed their concern that foreign air carriers would not be able to comply with the rule when a foreign government and the United States Government disagree as to the appropriate security procedures. The diplomatic note also urged the FAA to add a clause to the proposed regulation that would affirm the intention of the United States Government to consult with foreign governments whenever enhanced security procedures are envisaged at a foreign airport.

The FAA is acutely aware of the United States obligations under its bilateral air transport agreements, the Chicago Convention, and other international agreements. United States policy, established by section 201(a)(1) of the Act, is to seek bilateral agreements with foreign governments to achieve aviation security objectives. The FAA stated in the preamble of the NPRM that, except in an emergency, it will consult with the concerned foreign government authorities whenever enhanced security procedures are deemed necessary at a foreign airport. The United States Government reemphasizes its intention to consult with foreign government authorities and seek bilateral and multilateral agreements in accordance with United States policy.

with the requirement of Article 11 of the Chicago Convention, that States require their airlines to comply with the rules governing entry into, departure from, and operation within the territory of the other contracting States. This is such a rule.

The applicability of the rule to foreign air carrier operations at foreign airports that are last points of departure to the United States is necessary in order for the FAA to ensure that foreign air carrier operations into U.S. territory provide a level of protection similar to that provided by U.S. air carriers at those airports. The FAA also recognizes that government authorities, and not air carriers, perform security procedures at many foreign airports.

The notice of implementation policy published on June 15, 1989 [54 FR 25551] sets forth a policy that foreign air carriers could refer the FAA to the appropriate government authorities for information regarding the implementation of security procedures. That policy remains in effect. The FAA will look first to the foreign government authorities named by the foreign air carrier to obtain the information necessary to determine if a foreign air carrier's security program is acceptable.

Eight foreign air carriers objected to the proposed procedures by which the Administrator could amend a foreign air carrier's security program. Six foreign air carriers argued that the FAA should give notice of the specific deficiencies identified in a foreign air carrier's security program and an opportunity to address those deficiencies, prior to the Administrator's amending its security program. The proposed rule clearly stated that the Administrator would notify the foreign air carrier, in writing, of a proposed amendment and fix a period of not less than 45 days for the foreign air carrier to submit comments, unless there is a finding of an emergency requiring immediate action with respect to safety in air transportation.

The proposed rule also included procedures by which the foreign air carrier, except in an emergency, may request the Administrator to reconsider an amendment to its security program, and may submit its own amendment for acceptance. The FAA's mandate to exercise regulatory authority over air carriers also provides that an exemption may be granted when the air carrier can demonstrate that an alternative procedure will provide an equivalent level of safety. The FAA will not act unilaterally to amend foreign air carrier security programs except in an emergency. In those instances where the implementation of an amendment would require significant activities occurring outside of United States territory, the United States Government will endeavor to consult in advance with the foreign government in whose territory such activities would occur.

Two foreign air carriers specifically objected to the proposed rule on the grounds that Congress had not included any provision to amend foreign air carrier security programs in the Act. The Act provides that the Administrator ''shall require'' foreign air carriers to employ equivalent procedures where such procedures are necessary to ensure passengers are provided a similar level of protection. The Act further provides that the Administrator ''shall take such action as may be necessary'' to ensure that previously accepted foreign air carrier security programs also provide passengers a similar level of protection. The rule implements statutory authority and establishes regulatory authority to implement these provisions of the Act.

One commenter observed that the proposed rule did not specify, and foreign air carriers were not apprised of, the security procedures that might be required by an amendment to a foreign air carrier's security program. The commenter said that foreign air carriers could not meaningfully comment on the NPRM without knowing what substantive changes to their security programs were being contemplated by FAA. The specific security procedures to be used by a foreign air carrier are sensitive, not available under FAR Part 191, and not disclosed in public documents such as the NPRM. The FAA has developed enhanced security procedures to be implemented by foreign air carriers where the FAA has identified an increased risk to passengers. The procedures to be implemented may be modified or selectively implemented to address the situation at hand. The FAA will notify the foreign air carrier of any proposed amendments to its security program in accordance with the procedures established by the rule.

a similar level of protection.

Two commenters also took issue with the FAA's statement in the NPRM that "the perceived and often the actual-threat directed at the air carriers of various nations varies widely." These commenters asserted that the FAA is fostering a "misperception" that it is safer to fly on foreign air carriers than it is to fly on U.S. air carriers. The FAA has implemented a security system second to none to ensure that passengers may safely travel aboard U.S. air carriers anywhere in the world. The proposed rule did not mean to imply that passengers are at greater risk flying on U.S. air carriers, for such is not the case. Rather, the intent of the rule is to ensure that passengers are not at greater risk flying on foreign air carriers.

The risk to passengers traveling aboard a foreign air carrier must be compared with the risk to passengers flying U.S. air carriers at the same location. It is unwarranted to assume that passengers on all foreign air carriers are equally at risk wherever they may fly. Many foreign air carriers have never experienced an act of unlawful interference or sabotage, but could be threatened at an airport if the security posture at that airport deteriorates. Other foreign air carriers face a high threat but have implemented security procedures that reduce the risk. The FAA does not believe that equivalent security procedures are needed for all foreign air carriers at all airports to provide passengers a similar level of protection.

One commenter questioned the FAA's cost estimates as seriously understated. The enhanced procedures do not require sophisticated technology or lengthy training that would be difficult or excessively costly to implement. The FAA believes that the cost estimates may well be overstated both in terms of the scope of application of the enhanced procedures and the cost of labor to implement them at foreign airports.

Another commenter stated that the costs estimated by FAA were so low that it would be an "insignificant burden" to require identical security procedures for all air carriers. The FAA does not believe that security procedures should be required only for the sake of uniformity. The objective of the rule is to achieve a similar level of protection, not a similar level of expenditure.

**Regulatory Evaluation Summary**

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for the regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full Regulatory Impact Analysis, which includes the identification and evaluation of alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the Regulatory Flexibility Determination required by the Regulatory Flexibility Act and an International Trade Impact Analysis. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Comments on the NPRM for this rule were received from a total of eighteen individuals, air carriers, governments, and associations. Only one commenter, an association of foreign air carriers, addressed the economic evaluation of the proposed rule. The FAA does not find any of the comments on the

to provide passengers a similar level of protection as that provided by U.S. air carriers serving the same airport.

Since the extent to which these enhanced procedures will be activated is dependent on unknown future risk conditions, a definitive estimate of the total costs attributable to the rule is not possible. Accordingly, this evaluation includes estimates of the unit costs that would be incurred to employ the enhanced procedures for a range of application levels.

Work-load estimates for twelve enhanced security procedures were developed by the FAA. The unit costs for each procedure were multiplied by appropriate operations data to determine the expected cost per departure and the average annual costs per station, per foreign air carrier, and for all carriers that are subject to the provisions of the rule.

On average, the FAA estimates that the enhanced security procedures will increase costs by $349 per airplane departure during the first year at those stations where the procedures are applied. The average annual costs for larger aggregations are estimated at $238,000 per station, $510,000 per foreign air carrier, and a maximum potential total of $49.5 million if the enhanced procedures are activated for all foreign air carrier flights into the U.S. for 1 year. The worldwide risk conditions that would be necessary to activate these procedures for all flights by all foreign air carriers are unprecedented and are considered to be unlikely.

Based on previous experience, the FAA estimates that not more than 10 percent of foreign air carrier stations are likely to operate under the enhanced security procedures at any given time. Applying this assumption, the most likely cost of the amendment will not exceed $4.9 million per year.

For comparison purposes, it is estimated that the average economic valuation of a terrorist explosion incident ranges between $94 and $104 million, not counting injuries or secondary effects. These data support the position that the rule will be cost-beneficial if one terrorist explosion incident resulting in damages consistent with the above average monetary estimate is prevented over a 20-year period at the expected level of costs, or over a 2-year period at the maximum estimated potential cost where the enhanced security procedures would be implemented by all affected foreign air carriers for all flights to the United States. The determination that the rule is cost-beneficial is further supported by the fact that the enhanced security procedures will only be applied in those cases where the FAA has identified an increased risk to passengers and the Administrator has determined that they are necessary.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The FAA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Analysis**

The provisions of this rule will not affect U.S. entities, but could affect the existing access to U.S. markets by foreign interests. The rule requires that the security programs of foreign air carriers provide passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. The most likely cost of the amendment will not exceed $4.9 million per year—an average of $51,000 per year per foreign air carrier providing services to the United States from airports that are also served by U.S. air carriers. U.S. air carriers are already subject to the enhanced security procedures associated with this rule.

Determination and the International Trade Impact Analysis, the FAA has determined that this rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Part 129 of the Federal Aviation Regulations (14 CFR Part 129) effective July 31, 1991.

The authority citation is revised to read as follows:

*Authority:* 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

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## Amendment 129–23

## Use of X-ray Systems

**Adopted: September 16, 1991** **Effective: October 24, 1991**

**(Published in 56 FR 48370, September 24, 1991)**

**SUMMARY:** The FAA is amending the airplane operator security regulations by removing the exception to meeting the current x-ray imaging standard for x-ray screening systems in use prior to July 22, 1985. Each United States air carrier conducting screening under a mandatory security program will be required to use only x-ray systems that meet the current x-ray imaging standard required under its approved security program to screen carry-on and checked articles. Likewise, each foreign air carrier that lands or takes off in the United States will be required to use only x-ray screening systems that meet the current x-ray imaging standard under its accepted security program to screen carry-on and checked articles in the United States. This action is needed due to the increased sophistication of terrorist acts. The intended effect is to increase the safety of passengers and crewmembers aboard aircraft by providing an upgraded aid at airport screening points to prevent the carriage of explosives, incendiaries, or deadly or dangerous weapons.

**FOR FURTHER INFORMATION CONTACT:** Max D. Payne, Civil Aviation Security Policy and Standards Division (ACP–110), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7839.

### SUPPLEMENTARY INFORMATION:

### Background

*Statement of the Problem*

Attacks against civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the aviation community. In recent years, sophisticated explosive devices have been used to damage or destroy civilian airliners resulting in the loss of many lives. The bombing of Pan American World Airways (Pan Am) Flight 103 demonstrates the continuing need to protect the safety and security of passengers and crewmembers aboard air carriers. Eliminating any exceptions to meeting the most current x-ray imaging standard is one way to address this need,

carrier security, was promulgated in 1981 (46 FR 3782; January 15, 1981). The pertinent provisions in Part 129, which govern the operations of foreign air carriers that hold a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by those entities, were promulgated in 1976 (41 FR 30106; July 22, 1976).

On November 29, 1976, the FAA promulgated new 14 CFR Part 191 (41 FR 53777; December 9, 1976) establishing the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974. Air carrier security programs are documents detailing how U.S. and foreign air carriers will comply with the security requirements contained in the FAR. They contain sensitive security requirements, including specific performance criteria and operational information for x-ray systems, and are not available to the public.

On May 28, 1985, the FAA issued Amendments Nos. 108–1 and 129–13 (50 FR 25654; June 20, 1985), which established a new standard for testing the effectiveness of x-ray systems (14 CFR 108.17 and 129.26). This new standard was effective on July 22, 1985; however, it did not apply to x-ray systems in use prior to that date. In a parallel action, the FAA amended each air carrier's approved security program to include a ''grandfather'' provision for x-ray systems in use prior to July 22, 1985.

## Related Activities

For many years, the passenger screening system has been effective in countering the threat to domestic and international civil aviation, which primarily came from hijackers. In recent years, this threat has expanded to include aircraft bombings. The bombing of Pan Am Flight 103 is a reminder that civil aviation is still vulnerable to criminal and terrorist acts. A comprehensive review of security procedures has been conducted to determine where existing procedures may be improved and where new procedures may be warranted. On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to enhance protection of travelers at airports in the United States and other countries. Significant among these initiatives was the commitment to propose the removal of grandfather provisions for older x-ray systems. To accomplish this, a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (55 FR 25806) on June 22, 1990. This final rule makes the changes proposed in the NPRM.

Other recent FAA security initiatives include requiring the use of explosives detection systems (EDS) and the establishment of a mandatory security directives system, both the subject of separate rulemakings that resulted in the issuance of final rules. The final rule requiring EDS was issued on August 30, 1989 (54 FR 36938; September 5, 1989). See 14 CFR 108.20. The final rule establishing the Security Directives and Information Circulars system was issued on July 6, 1989 (54 FR 28982; July 10, 1989). See 14 CFR 108.18.

## Current Requirements

Currently, Part 108 requires each holder of an FAA air carrier operating certificate required to conduct screening to use the procedures, facilities, and equipment described in its approved security program to prevent or deter the carriage aboard airplanes of any explosives, incendiaries, or deadly or dangerous weapons on or about each individual's person or accessible property. Part 129 requires each foreign air carrier landing or taking off in the United States to adopt and use a security program acceptable to the Administrator and designed to prevent or deter the carriage aboard airplanes of any explosive, incendiary device, or deadly or dangerous weapon on or about each individual's person or accessible property, through screening by weapon-detecting procedures or facilities. Both parts 108 and 129 require x-ray systems used to inspect carry-on and checked articles in the United States to meet the imaging standard set by the Administrator, except that an x-ray system in use prior to July 22, 1985, may meet the requirements in effect on July 21, 1985. See 14 CFR 108.17(a)(5) and 129.26(a)(5).

and impact of a new standard. The FAA is proceeding with this rule to address the need to protect the safety and security of passengers and crewmembers, and to implement the recommendations of the President's Commission on Aviation Security and Terrorism. Given the benefits expected to result from this rule, and the minimal costs involved, the FAA has determined that it is cost-beneficial to proceed with this rule to bring all x-ray systems up to current standards. Air carriers and foreign air carriers will be given the opportunity to comment on any proposed amendment to their security programs that would establish a new imaging standard.

As previously stated, security programs are exempt from disclosure under 14 CFR Part 191. In accordance with 14 CFR 191.5, the FAA will not provide the current or any future performance criteria or detailed operational information in any document generally available to the public. The FAA has determined that disclosure of this information would be detrimental to the safety of persons traveling in air transportation or intrastate air transportation.

## General Discussion

The FAA is amending Part 108 to ensure that all certificate holders use only x-ray systems that meet the current imaging requirements of their approved security programs to screen carry-on and checked articles. The FAA is also amending Part 129 to require foreign air carriers who land or take off in the United States and who conduct screening under an accepted security program to use only x-ray systems that meet the current imaging requirements in their accepted security programs to screen carry-on and checked articles in the United States.

### *Section 108.17*

Paragraph (a)(5) of this section is revised to eliminate a grandfather clause allowing for the exception of certain x-ray systems from the requirement to meet the imaging requirements set forth in an approved air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

### *Section 129.26*

Paragraph (a)(5) of this section is revised to eliminate a grandfather clause allowing for the exception of certain x-ray systems from the requirement to meet the imaging requirements set forth in an accepted air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

## Discussion of Comments

The FAA received comments from three air carriers, one foreign air carrier, five crewmember organizations, and the National Transportation Safety Board. Eight commenters supported the proposed rule and two opposed it.

One commenter expressed support with the understanding that x-ray systems installed prior to July 22, 1985, could continue to be used for screening if they meet the current imaging standard. This understanding is correct. The FAA did not propose to require air carriers to replace all x-ray systems installed prior to July 22, 1985. Any x-ray system, regardless of age, may continue to be used for screening when it meets the imaging standard specified in the air carrier's approved security program.

Another supporting commenter noted that many of the older x-ray systems that do not meet the current imaging standard are located at smaller airports. A requirement to replace all of these x-ray systems at once was said to be an economic burden at stations with marginal passenger volume. A two year implementation period was suggested to gradually phase in replacement x-ray systems at larger airports before proceeding to smaller airports.

The actual schedule for replacement of x-ray systems that do not meet the current imaging standard will be contained in amendments to each air carrier's approved security program. The FAA has notified

use of an x-ray system to inspect carry-on and checked articles. Air carriers may physically inspect all such articles to comply with their approved security programs.

The application of the rule to x-ray systems used by foreign air carriers for flights to the United States was opposed by one commenter. The comment expressed the view that if a State wishes to implement enhancements to security measures for flights to that State from another State the appropriate procedure is to request the foreign State to establish the desired standard. Sections 108.17(a) and 129.26(a) both apply only to "an x-ray system within the United States". This rule does not change that application to include x-ray systems at foreign airports.

One commenter opposed the proposed rule as unnecessary and unjustified at smaller airports, arguing that x-ray systems that do not meet the current imaging standard should continue to be used with more physical searches to clear items that cannot be identified by the x-ray operator. The commenter said it might be appropriate to require a higher imaging standard at larger airports.

The FAA does not agree that a clearly outdated imaging standard is acceptable even at smaller airports. If physical searches are not used exclusively, the decision to conduct a physical search is made by the x-ray system operator viewing the x-ray image. The ability of the operator to recognize a potential explosive, incendiary, or deadly or dangerous weapon is dependent upon the imaging capability of the x-ray system. The intent of this rule is to increase the safety of passengers and crewmembers by providing a better image to the operator and increasing the probability that weapons, explosives, and incendiaries will be detected.

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no collection of information requirements associated with this rule.

## Regulatory Evaluation Summary

### *Introduction*

This section summarizes a full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. The full evaluation quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits and impacts.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition. The FAA has determined that this rule is not "major" as defined in the Executive Order; therefore a regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been performed. Instead, the FAA has prepared a regulatory evaluation of just this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

### *Costs*

The FAA estimates there are 114 U.S. air carrier and two foreign air carrier x-ray systems currently in service in the United States that are incapable of meeting current imaging requirements using the step wedge as specified in American Society for Testing and Materials Standard F792–82. These requirements have been in effect since July 1985. (in the NPRM published in 1990, the FAA estimated there were

additional x-ray systems that do not meet the current imaging standard, all existing systems that fail to meet the standard must be at least 5 years old now. Therefore, by assuming a 9-year average life for x-ray systems, the cost of this rule is the difference between purchasing 116 new standard x-ray systems immediately (net of salvage value for replaced systems) versus purchasing new systems over a 4-year period as the existing systems wear out.

For the purposes of this analysis, replacement system costs reflect the price of a standard black and white x-ray system used for hand-carried articles because this system is a basic model that meets the current standard. Industry sources state such systems retail for about $32,000 each, including installation. Prices will vary, however, based on location and number of systems ordered. At $32,000 each, 116 new systems would cost about $3.71 million. The replaced system, which has somewhere between zero and 4 years of useful life remaining, will have some resale value for non-aviation purposes such as industrial security. The FAA estimates the current average resale value per system at $4,000, or about $0.46 million for the estimated 116 systems still in use. Therefore, the total immediate outlay for new x-ray systems will be $3.71 million less $0.46 million = $3.25 million.

The net cost of this rule will be $3.25 million less the discounted cost of replacing systems when they wear out. Thus, the net cost of the rule is the difference between the current replacement cost of the systems and the discounted cost of the systems if purchased at a later date. No information is readily available concerning the exact age of each existing system that will need to be replaced, or the current replacement rate of such systems. It has been assumed for this analysis that one-fourth (29) of these systems will be replaced in each of the next 4 years. The discounted cost (a 10 percent discount rate is used) of replacing these 116 systems over a 4-year period is $3.09 million. Therefore, the net cost of this rule is $3.25 million less $3.09 million = $0.16 million, or about $1,380 per replacement x-ray system.

These costs ($0.16 million) were calculated as of year end 1990. The costs of this rule will decrease over time, as more x-ray systems that do not meet the current imaging standard reach the end of their useful lives and are replaced with new systems. Taking into account the time that has elapsed since these costs were calculated, plus a six-month implementation period following the rule's effective date, the actual costs of this rule will be substantially lower than stated here by the time carriers actually implement the changes mandated by the rule.

Another cost factor concerns anticipated differences in maintenance costs between the replaced systems and the replacement systems. The FAA expects their maintenance costs to be very similar, and will, therefore, not alter the above cost calculations. However, one industry representative indicated that many of the systems that will be replaced are equipped with image intensifiers that are relatively expensive, and might need replacing once a year. In comparison, technological improvements in the replacement systems have eliminated the need for image intensifiers. Therefore, it is possible that the overall costs of this rule are somewhat overstated.

*Benefits*

The amended regulation will make it more difficult to carry an explosive device onto domestic and international flights. Therefore, it is expected to provide an additional margin of safety and security for passengers and crew members aboard air carriers. The FAA cannot predict the number or severity of future incidents nor the number of incidents that would be perpetrated if this rule did not go into effect. The frequency of terrorist incidents would depend on several factors such as the world-wide political climate, the skill and technical sophistication of terrorist organizations, and the success of efforts to avert these incidents.

The historical record reveals that 19 separate criminal acts and incidents of terrorism using explosives were perpetrated against U.S. air carriers between 1979 and 1988. Because the FAA expects the threat of sabotage to increase in the future, and because the x-ray systems in question have been identified as a weak link in the overall U.S. civil aviation security system, the FAA expects that substantial benefits will result from the rule.

accordance with guidelines issued by the Office of the Secretary of Transportation dated June 22, 1990). Using a statistical value of a human life of $1.5 million, or about $1.25 million when discounted over 4 years, the benefits associated with saving a single life during the next 4 years would be about 7.8 times the estimated $160,000 cost to accomplish it. Given the large difference between potential benefits and known costs, the FAA believes this rule to be cost-beneficial.

## International Trade Impact

The rule will have little or no impact on trade for U.S. firms doing business overseas or for foreign firms doing business in the United States. The rule affects all carriers of U.S. registry and foreign air carriers operating scheduled passenger service or public charter passenger operations in the United States that are required to screen passengers under a security program. The expected additional annual costs should not create an economic disadvantage to either domestic operators or foreign carriers operating in the United States.

## Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules to determine whether they may have a "significant economic impact on a substantial number of small entities." The FAA's criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For air carrier operators, a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA's criteria for "a significant impact" are at least $4,200 per year for an unscheduled carrier, $60,300 per year for a scheduled carrier having an airplane or airplanes with only 60 or fewer seats, and $107,900 per year for a scheduled carrier having an airplane or airplanes with 61 or more seats.

The FAA believes that it is very unlikely that the rule will have a significant economic impact on a substantial number of small entities. This amendment has relatively low costs because the estimated cost per replacement x-ray system is only $1,380. At least 11 of the small unscheduled carriers would have to own three or more of the of the x-ray systems in need of replacement for this rule to have a significant economic impact on a substantial number of small entities. The FAA believes that less than 33 of these x-ray systems are currently owned and operated by small entities. Therefore, the FAA finds that this final rule will not have a significant impact on a substantial number of small entities.

## Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

## Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Act of 1958 (49 U.S.C. 1372) or other appropriate economic or exemption authority issued by the Civil Aeronautics Board of the Department of Transportation.

(b) Section 129.14 also applies to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. For the purpose of this part, a foreign person is any person, not a citizen of the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

Docket No. 24856 (52 FR 20029) 5/28/87; (Amdt. 129–12, Eff. 4/28/82); (Amdt. 129–14, Eff. 8/25/87)

### § 129.11 Operations specifications.

(a) Each foreign air carrier shall conduct its operations within the United States in accordance with operations specifications issued by the Administrator under this part and in accordance with the Standards and Recommended Practices contained in Part I (International Commercial Air Transport) of Annex 6 (Operation of Aircraft) to the Convention on International Civil Aviation Organization. Operations specifications shall include:

(1) Airports to be used;

(2) Routes or airways to be flown; and

(3) Such operations rules and practices as are necessary to prevent collisions between foreign aircraft and other aircraft.

(4) Registration markings of each U.S.-registered aircraft.

(b) An application for the issue or amendment of operations specifications must be submitted in duplicate, at least 30 days before beginning operations in the United States, to the Flight Standards District Office in the area where the applicant's quarters of the military organization concerned and submit two copies of that written permission with his application. Detailed requirements governing applications for the issue or amendment of operations specifications are contained in Appendix A.

(c) No person operating under this part may operate or list on its operations specifications any airplane listed on operations specifications issued under Part 125.

(Amdt. 129–14, Eff. 8/25/87); (Amdt. 129–19, Eff. 10/25/89)

### § 129.13 Airworthiness and registration certificates.

(a) No foreign air carrier may operate any aircraft within the United States unless that aircraft carries current registration and airworthiness certificates issued or validated by the country of registry and displays the nationality and registration markings of that country.

(b) No foreign air carrier may operate a foreign aircraft within the United States except in accordance with the limitations on maximum certificated weights prescribed for that aircraft and that operation by the country of manufacture of the aircraft.

### § 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered aircraft.

(a) Each foreign air carrier and each foreign person operating a U.S.-registered aircraft within or outside the United States in common carriage shall ensure that each aircraft is maintained in accordance with a program approved by the Administrator.

(b) No foreign air carrier or foreign person may operate a U.S.-registered aircraft with inoperable

ing geographic responsibility for the operator. The foreign operator must show, before minimum equipment list approval can be obtained, that the maintenance procedures used under its maintenance program are adequate to support the use of its minimum equipment list.

(3) For leased aircraft maintained and operated under a U.S. operator's continuous airworthiness maintenance program and FAA-approved minimum equipment list, the foreign operator submits the U.S. operator's approved continuous airworthiness maintenance program and approved aircraft minimum equipment list to the FAA office prescribed in paragraph (b)(2) of this section for review and evaluation. The foreign operator must show that it is capable of operating under the lessor's approved maintenance program and that it is also capable of meeting the maintenance and operational requirements specified in the lessor's approved minimum equipment list.

(4) The FAA letter of authorization permitting the operator to use an approved minimum equipment list is carried aboard the aircraft. The minimum equipment list and the letter of authorization constitute a supplemental type certificate for the aircraft.

(5) The approved minimum equipment list provides for the operation of the aircraft with certain instruments and equipment in an inoperable condition.

(6) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(7) The aircraft is operated under all applicable conditions and limitations contained in the minimum equipment list and the letter authorizing the use of the list.

Docket No. 24856 (52 FR 20029) Eff. 5/28/87; (Amdt. 129–14, Eff. 8/25/87); (Amdt. 129–15, Eff. 2/25/88)

### § 129.15 Flight crewmember certificates.

No person may act as a flight crewmember unless he holds a current certificate or license issued or validated by the country in which that aircraft is with such radio equipment as is necessary to properly use the air navigation facilities, and to maintain communications with ground stations, along or adjacent to their routes in the United States.

(b) Whenever VOR navigational equipment is required by paragraph (a) of this section, at least one distance measuring equipment unit (DME), capable of receiving and indicating distance information from the VORTAC facilities to be used, must be installed on each airplane when operated between at or above 24,000 feet MSL within the 50 states, and the District of Columbia.

(Amdt. 129–2, Eff. 9/21/65); (Amdt. 129–4, Eff. 7/1/66); (Amdt. 129–7, Eff. 11/26/76)

### § 129.18 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1993, no foreign air carrier may operate in the United States a turbine powered airplane that has a maximum passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with—

(1) a TCAS II traffic alert and collision avoidance system capable of coordinating with TCAS units that meet the specifications of TSO C–119, and

(2) the appropriate class of Mode S transponder.

Docket No. 25355 (54 FR 951) 1/10/89; (Amdt. 129–17, Eff. 2/9/89); (Amdt. 129–21, Eff. 5/9/90)

### § 129.19 Air traffic rules and procedures.

(a) Each pilot must be familiar with the applicable rules, the navigational and communications facilities, and the air traffic control and other procedures, of the areas to be traversed by him within the United States.

(b) Each foreign air carrier shall establish procedures to assure that each of its pilots has the knowledge required by paragraph (a) of this section and shall check the ability of each of its pilots to operate safely according to applicable rules and procedures.

the ground personnel necessary to provide for two-way voice communication between its aircraft and ground stations, at places where the Administrator finds that voice communication is necessary and that communications cannot be maintained in a language with which ground station operators are familiar.

(b) Each person furnished by a foreign air carrier under paragraph (a) of this section must be able to speak both English and the language necessary to maintain communications with the aircraft concerned, and shall assist ground personnel in directing traffic.

### § 129.23 Transport category cargo service airplanes: increased zero fuel and landing weights.

(a) Notwithstanding the applicable structural provisions of the transport category airworthiness regulations, but subject to paragraphs (b) through (g) of this section, a foreign air carrier may operate (for cargo service only) any of the following transport category airplanes (certificated under Part 4b of the Civil Air Regulations effective before March 13, 1956) at increased zero fuel and landing weights—

(1) DC–6A, DC–6B, DC–7B, DC–7C; and

(2) L–1049 B, C, D, E, F, G, and H, and the L–1649A when modified in accordance with supplemental type certificate SA 4–1402.

(b) The zero fuel weight (maximum weight of the airplane with no disposable fuel and oil) and the structural landing weight may be increased beyond the maximum approved in full compliance with applicable rules only if the Administrator finds that—

(1) The increase is not likely to reduce seriously the structural strength;

(2) The probability of sudden fatigue failure is not noticeably increased;

(3) The flutter, deformation, and vibration characteristics do not fall below those required by applicable regulations; and

(4) All other applicable weight limitations will be met.

of airplane.

(e) A foreign air carrier may not operate an airplane under this section unless the country of registry requires the airplane to be operated in accordance with the passenger-carrying transport category performance operating limitations in Part 121 or the equivalent.

(f) The Airplane Flight Manual for each airplane operated under this section must be appropriately revised to include the operating limitations and information needed for operation at the increased weights.

(g) Each airplane operated at an increased weight under this section must, before it is used in passenger service, be inspected under the special inspection procedures for return to passenger service established and issued by the manufacturer and approved by the Administrator.

(Amdt. 129–1, Eff. 4/1/65)

### § 129.25 Airplane security.

(a) The following are definitions of terms used in this section:

(1) ''Approved security program'' means a security program required by Part 108 of this title approved by the Administrator.

(2) ''Certificate holder'' means a person holding an FAA air carrier operating certificate or operating certificate when that person engages in scheduled passenger or public charter operations, or both.

(3) ''Passenger seating configuration'' means the total number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight and includes that seat in certain airplanes which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

(4) ''Private charter'' means any charter for which the charterer engages the total capacity of an airplane for the carriage only of:

(i) Passengers in civil or military air movements conducted under contract with the

(6) "Scheduled passenger operations" means holding out to the public of air transportation service for passengers from identified air terminals at a set time announced by timetable or schedule published in a newspaper, magazine, or other advertising medium.

(7) "Sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved security program or a security program used in accordance with § 129.25.

(b) Each foreign air carrier landing or taking off in the United States shall adopt and use a security program, for each scheduled and public charter passenger operation, that meets the requirements of—

(1) Paragraph (c) of this section for each operation with an airplane having a passenger seating configuration of more than 60 seats;

(2) Paragraph (c) of this section for each operation that will provide deplaned passengers access, that is not controlled by a certificate holder using an approved security program or a foreign air carrier using a security program required by this section, to a sterile area;

(3) Paragraph (c) of this section for each operation with an airplane having a passenger seating configuration of more than 30 seats but less than 61 seats for which the FAA has notified the foreign air carrier that a threat exists; and

(4) Paragraph (d) of this section for each operation with an airplane having a passenger seating configuration of more than 30 seats but less than 61 seats, when the Director of Civil Aviation Security or a designate of the Director has not notified the foreign air carrier in writing that a threat exists with respect to that operation.

(c) Each security program required by paragraph (b)(1), (2), or (3) of this section shall be designed to—

(1) Prevent or deter the carriage aboard airplanes of any explosive, incendiary device or a deadly or dangerous weapon on or about each individual's person or accessible property, except as provided in § 129.27 of this part, through

(d) Each security program required by paragraph (b)(4) of this section shall include the procedures used to comply with the applicable requirements of paragraphs (h)(2) and (i) of this section regarding law enforcement officers.

(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier's security program is acceptable only if the Administrator finds that the security program provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airport. Foreign air carriers shall employ procedures equivalent to those required of U.S. air carriers serving the same airport if the Administrator determines that such procedures are necessary to provide passengers a similar level of protection. The following procedures apply for acceptance of a security program by the Administrator:

(1) Unless otherwise authorized by the Administrator, each foreign air carrier required to have a security program by paragraph (b) of this section shall submit its program to the Administrator at least 90 days before the intended date of passenger operations. The proposed security program must be in English unless the Administrator requests that the proposed program be submitted in the official language of the foreign air carrier's country. The Administrator will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition the Administrator to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(2) In the case of a security program previously found to be acceptable pursuant to this section, the Administrator may subsequently amend the security program in the interest of safety in air transportation or in air commerce and in the public interest within a specified

(ii) At the end of the comment period, after considering all relevant material, the Administrator notifies the foreign air carrier of any amendment to be adopted and the effective date, or rescinds the notice of proposed amendment. The foreign air carrier may petition the Administrator to reconsider the amendment, in which case the effective date of the amendment is stayed until the Administrator reconsiders the matter.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedures in paragraph (e)(2) of this section impractical or contrary to the public interest, the Administrator may issue an amendment to the foreign air carrier security program, effective without stay on the date the foreign air carrier receives notice of it. In such a case, the Administrator incorporates in the notice of amendment the finding and a brief statement of the reasons for the amendment.

(4) A foreign air carrier may submit a request to the Administrator to amend its security program. The requested amendment must be filed with the Administrator at least 45 days before the date the foreign carrier proposes that the amendment would become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving the requested amendment, the Administrator will notify the foreign air carrier whether the amendment is acceptable. The foreign air carrier may petition the Administrator to reconsider a notice of unacceptability of the requested amendment within 45 days after receiving notice of unacceptability.

(5) Each foreign air carrier required to use a security program by paragraph (b) of this section shall, upon request of the Administrator, and in accordance with applicable law, provide information regarding the implementation and operation of its security program.

(f) No foreign air carrier may land or take off an airplane in the United States, in passenger operations, after receiving a bomb or air piracy threat conducted before the next flight.

(2) If the airplane is in flight to a place in the United States when a bomb threat is received, the foreign air carrier ensures that the pilot in command is advised immediately to take the emergency action necessary under the circumstances and a security inspection of the airplane is conducted immediately after the next landing.

(3) If information is received of a bomb or air piracy threat against an airplane engaged in an operation specified in paragraph (f)(1) or (f)(2) of this section, the foreign air carrier ensures that notification of the threat is given to the appropriate authorities of the State in whose territory the airplane is located or, if in flight, the appropriate authorities of the State in whose territory the airplane is to land.

(g) Each foreign air carrier conducting an operation for which a security program is required by paragraph (b)(1), (2), or (3) of this section shall refuse to transport—

(1) Any person who does not consent to a search of his or her person in accordance with the security program; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the security program.

(h) At airports within the United States not governed by Part 107 of this chapter, each foreign air carrier engaging in public charter passenger operations shall—

(1) When using a screening system required by paragraph (b) of this section, provide for law enforcement officers meeting the qualifications and standards, and in the number and manner, specified in Part 107; and

(2) When using an airplane having a passenger seating configuration of more than 30 but less than 61 seats for which a screening system is not required by paragraph (b) of this section, arrange for law enforcement officers meeting the qualifications and standards specified in Part 107 to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect

law enforcement officers meeting the qualifications and standards specified in Part 107 to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect to procedures for obtaining law enforcement assistance at that airport.

(j) Unless otherwise authorized by the Administrator, each foreign air carrier required to conduct screening under this part shall use procedures, facilities, and equipment for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboarding screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(Amdt. 129–5, Eff. 10/9/75); (Amdt. 129–6, Eff. 8/23/76); (Amdt. 129–9, Eff. 7/25/78); (Amdt. 129–11, Eff. 9/11/81); (Amdt. 129–16, Eff. 12/21/87); (Amdt. 129–18, Eff. 4/17/89); (Amdt. 129–22, Eff. 7/31/91)

### § 129.26 Use of X-ray systems.

(a) No foreign air carrier may use an x-ray system in the United States to inspect carry-on and checked articles unless:

(1) For a system manufactured prior to April 25, 1974, it meets either the guidelines issued by the Food and Drug Administration (FDA), Department of Health, Education, and Welfare and published in the Federal Register (38 FR 21442, August 8, 1973); or the performance standards for cabinet x-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.40 (39 FR 12985, April 10, 1974);

(2) For a system manufactured after April 24, 1974, it meets the standards for cabinet x-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.40 (39 FR 12985, April 10, 1974);

(3) A program for initial and recurrent training of operators of the system has been established, which includes training in radiation safety, the evaluations will be maintained by the foreign air carrier; and

(5) The system meets the imaging requirements set forth in an accepted Foreign Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

(b) No foreign air carrier may use an x-ray system as specified in paragraph (a) of this section—

(1) Unless within the preceding 12 calendar months a radiation survey has been conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the Food and Drug Administration in the Federal Register of August 8, 1973 (38 FR 21442);

(2) After the system is initially installed or after it has been moved from one location to another, unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the Food and Drug Administration in the Federal Register on August 8, 1973 (38 FR 21442); except that a radiation survey is not required for an x-ray system that is moved to another location, if the foreign air carrier shows that the system is so designed that it can be moved without altering its performance;

(3) That is not in full compliance with any defect notice or modification order issued for that system by the Food and Drug Administration, Department of Health, Education, and Welfare, unless that Administration has advised the FAA that the defect or failure to comply is not such as to create a significant risk or injury, including genetic injury, to any person; and

(4) Unless a sign is posted in a conspicuous place at the screening station and on the x-ray system which notifies passengers that carry-on and checked articles are being inspected by an x-ray system and advises them to remove all x-ray, scientific, and high-speed film from their carry-on and checked articles before inspection. This sign shall also advise passengers that they may request an inspection to be made of their photographic equipment and film packages with-

without exposure to an x-ray system.

(c) Each foreign air carrier shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b)(1) or (b)(2) of this section at the place where the x-ray system is in operation and shall make it available for inspection upon request by the Administrator.

(d) The American Society for Testing and Materials Standard F792–82, "Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," described in this section is incorporated by reference herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by these amendments may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. In addition, a copy of the standard may be examined at the FAA Rules Docket, Docket No. 24115, 800 Independence Ave. SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

Docket No. 15286 (41 FR 30106) 7/22/76; (Amdt. 129–6, Eff. 8/23/76); (Amdt. 129–8, Eff. 4/24/78); (Amdt. 129–10, Eff. 10/19/79); (Amdt. 129–13, Eff. 7/22/85); (Amdt. 129–23, Eff. 10/24/91)

### § 129.27 Prohibition against carriage of weapons.

(a) No person may, while on board an aircraft being operated by a foreign air carrier in the United States, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to—

(1) The passenger has notified the foreign air carrier before checking the baggage that the weapon is in the baggage; and

(2) The baggage is carried in an area inaccessible to passengers.

Docket No. 15286 (41 FR 30107) 7/22/76; (Amdt. 129–5, Eff. 10/9/75); (Amdt. 129–6, Eff. 8/23/76)

### § 129.29 Prohibition against smoking.

No person may smoke and no operator shall permit smoking in the passenger cabin or lavatory during any scheduled airline flight segment in air transportation or intrastate air transportation which is—

(a) Between any two points within Puerto Rico, the United States Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska or Hawaii) or between any two points in any one of the above-mentioned jurisdictions (other than Alaska or Hawaii);

(b) Within the State of Alaska or within the State of Hawaii; or

(c) Scheduled in the current Worldwide or North American Edition of the Official Airline Guide for 6 hours or less in duration and between any point listed in paragraph (a) of this section and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

(Amdt. 129–20, Eff. 2/25/90)

jurisdiction are effected through the respective embassy of the foreign government and the United States Department of State.

(b) *Format of application.* The attached outline must be followed in completing the information to be submitted in the application.

## Application for Foreign Air Carrier Operations Specifications (Outline)

In accordance with the Federal Aviation Act of 1958 (49 U.S.C. 1372) and Part 129 of the Federal Aviation Regulations, application is hereby made for the issuance of Foreign Operations Specifications.

Give exact name and full post office address of applicant.

Give the name, title, and post office address (within the United States if possible) of the official or employee to whom correspondence in regard to the application is to be addressed.

Unless otherwise specified, the applicant must submit the following information only with respect to those parts of his proposed operations that will be conducted within the United States.

### Section I. Operations.

State whether the operation proposed is day or night, visual flight rules, instrument flight rules, or a particular combination thereof.

### Section II. Operational plans.

State the route by which entry will be made into the United States, and the route to be flown therein.

rial will be indicated in a manner that will facilitate identification. The applicant may use any method that will clearly distinguish the information, such as different colors, different types of lines, etc. For example, if different colors are used, the identification will be accomplished as follows:

1. Regular route: Black.
2. Regular terminal airport: Green circle.
3. Alternate airports: Orange circle.
4. The location of radio navigational facilities which will be used in connection with the proposed operation, indicating the type of facility to be used, such as radio range, ADF, VOR, etc.

B. *Airports.* Submit the following information with regard to each regular terminal and alternate to be used in the conduct of the proposed operation:

1. Name of airport or landing area.
2. Location (direction distance to and name of nearest city or town).

### Section IV. Radio facilities: Communications.

List all ground radio communication facilities to be used by the applicant in the conduct of the proposed operations within the United States and over that portion of the route between the last point of foreign departure and the United States.

### Section V. Aircraft.

Submit the following information in regard to each type and model aircraft to be used.

A. *Aircraft.*

1. Manufacturer and model number.
2. State of origin.
3. Single-engine or multiengine. If multiengine, indicate number of engines.

C. *Licensing.* State name of country by whom aircraft are certificated.

**Section VI. Airmen.**

List the following information with respect to airmen to be employed in the proposed operation within the United States.

A. State the type and class of certificate held by each flight crewmember.

B. State whether or not pilot personnel have received training in the use of navigational facilities necessary for en route operation and instrument letdowns along or adjacent to the route to be flown within the United States.

C. State whether or not personnel are familiar with those Parts of the Federal Aviation Regulations pertaining to the conduct of foreign air carrier operations within the United States.

D. State whether pilot personnel are able to speak and understand the English language to a degree necessary to enable them to properly communicate with Airport Traffic Control Towers and Airway Radio Communication Stations using radiotelephone communications.

**Section VII. Dispatchers.**

A. Describe briefly the dispatch organization which you propose to set up for air carrier operations within the United States.

D. Are dispatching personnel certificated by the country of origin?

**Section VIII. Additional Data.**

A. Furnish such additional information and substantiating data as may serve to expedite the issuance of the operations specifications.

B. Each application shall be concluded with a statement as follows:

I certify that the above statements are true.

Signed this _____ day of_____ 19_____.

_____

(Name of applicant)

by _____

(Name of person duly authorized to execute this application on behalf of the applicant.)

(Amdt. 129–14, Eff. 8/25/87); (Amdt. 129–19, Eff. 10/25/89)

specifications an operator may be issued consistent with the scope and type of its operations; (2) specify and clarify the certification requirements the operator must meet with respect to each type of operation in order to be eligible to have a specified type of operation authorized in its operations specifications; (3) clarify the regulations with which an operator must comply in the conduct of the operations specified; (4) include provisions regarding Part 125 and other regulations which have been promulgated since the adoption of Special Federal Aviation Regulation (SFAR) No. 38 and eliminate provisions that relate to Part 123 and other regulations that are no longer applicable; (5) authorize certain operators of transport category alrplanes having a maximum passenger seating configuration, excluding any required crewmember seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less to operate under the provisions of Part 121 rather than Part 135 when a specific authorization is obtained from the Administrator (the related ''pass-through'' provision of SFAR 38 is deleted); (6) require rotorcraft operations that may currently be subject to Parts 121 and 127 to be conducted under Part 135; and (7) include the substance of present Part 129 applicability in order to provide a comprehensive listing of certification and operations specifications requirements.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Bedore, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 472–4621.

## SUPPLEMENTARY INFORMATION:

### Background

On January 30, 1985, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 85–3 (50 FR 4472). This Notice proposed to revise SFAR 38 primarily to specify and clarify FAA requirements for operating certificates and for operations specifications for persons who operate under Federal Aviation Regulations Parts 121 and 135. The Notice was issued to bring SFAR 38 up to date in view of changes in the regulations and in the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's continuing response to the sunset of the Civil Aeronautics Board.

This amendment updates SFAR 38 in light of changes since 1978 and clarifies those provisions in SFAR 38 that state which FAA regulations apply to a particular air carrier for the type of operation the air carrier is conducting in the areas summarized below. A fuller discussion of each area is contained in the preamble to NPRM 85–3.

One of the purposes of this amendment is to clearly define, for each type of operation (e.g., scheduled common carriage within the United States, all-cargo operations, scheduled common carriage outside the United States, etc.): (1) The type of certificate, (2) the certification requirements, (3) the operations specifications, and (4) the regulations within the applicable Parts of the FAR with which an operator must comply when conducting each type of operation.

As amended, SFAR 38–2 makes it clear that wherever the term ''commuter air carrier'' appears in Part 135 of the FAR, it shall be deemed to mean a holder of an ''Air Carrier Operating Certificate'' that is conducting scheduled passenger carrying operations with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. This frequency of operations is a standard currently accepted by the industry and the FAA for air carrier certification and operation rules. However, this definition would not apply to Part 93 of the FAR. Further, a regulation that

receives authorization from the Administrator to conduct its operation under Part 121.

SFAR 38 is updated by adding provisions which reference Part 125 which became effective February 3, 1981, and deletes the provisions relating to Part 123 which was revoked effective January 1, 1983.

SFAR 38–2 requires rotorcraft operations that are now conducted under Part 121 or Part 127 to be conducted under Part 135. The amendment, in effect, suspends Part 127 and §§ 121.13 and 121.157(e), and requires all rotorcraft operations to be conducted under Part 135.

As amended, SFAR 38–2 includes the substance of the applicability of present Part 129 in order to provide for a comprehensive listing of certification and operations specifications requirements.

SFAR 38 as revised by this amendment will be effective until May 1, 1986, unless sooner superseded or revoked.

**Comments on Proposed SFAR 38–2**

During the comment period, the FAA received 15 comments. The limited number of comments received and the tone of the comments indicate overall substantial agreement with proposed SFAR 38–2. A few commenters recommended minor changes or raised questions about certain provisions of SFAR 38–2.

One commenter questioned whether the opening sentence of SFAR 38–2 which reads "Contrary provisions of Parts 121, 125, 127, 129, and 135 of the Federal Aviation Regulations notwithstanding," may create confusion. The "notwithstanding" clause is a carryover from original SFAR 38 and it does not appear to have caused the kind of confusion the commenter suggests.

Four commenters request that the phrase "passenger seating capacity" in proposed paragraphs 4(a) and 4(b) be changed to "passenger seating configuration" as it is in current SFAR 38 paragraphs 2(a) and (b) and 3(a) and (b). The reason is that the proposed wording would mean that if an aircraft has been certificated for a certain maximum seating capacity, that figure would be the compliance factor, rather than the number of installed passenger seats in the aircraft. The FAA did not intend to change the criteria for compliance and has, therefore, changed the language back to "passenger seating configuration" as it appears in the provisions of present SFAR 38 cited above.

For consistency of language within SFAR 38–2 and also for consistency of application of the FAR, the term "passenger seating capacity" in paragraph 5(a), which relates to Part 125 has also been changed to "passenger seating configuration" even though Part 125 (section 125.1(a)) presently uses "seating capacity." The FAA does not consider this a substantive change since Part 125 has been applied on the basis of seating "configuration" rather than seating "capacity."

One commenter objected to the phrase "certain procedures" used in Section 3 as being unclear. The commenter suggested changing "certain procedures" to "appropriate regulations." The FAA does not agree. The term "certain procedures" refers to procedures that may be included in operations specifications to reflect requirements imposed on a specific operator in addition to the Federal Aviation Regulations. Examples would include specific procedures that might be tied in with a deviation or an exemption approved for that carrier. The commenter also objected to the phrase "size of aircraft" in Section 3 as not being sufficiently specific.

The FAA agrees. The NPRM preamble was written before the 1984 amendments to the Airline Deregulation Act of 1978, (Pub. L. 98–443, October 4, 1984) which stipulated that DOT will continue the CAB function of determining fitness.

One commenter objects to the explanation in the preamble concerning confusion as to applicable regulations resulting from the sunset of the CAB. This commenter states that an FAA policy change, rather than confusion, was responsible for the FAA's requiring 21 carriers to shift from the supplemental rules of Part 121 to the domestic or flag rules of Part 121, as appropriate. This point was addressed in the preamble to the proposed revision of SFAR 38 as follows:

"It is the FAA's position that an air carrier certificated under current SFAR 38 in accordance with the rules of Part 121 must, if it is engaged in scheduled passenger operations, operate in accordance with the rules applicable to domestic or flag air carriers as required by § 121.3(a) or § 121.3(c) and be issued domestic and flag operations specifications. Furthermore, it is the FAA's position that an air carrier engaged in nonscheduled passenger-carrying operations must operate in accordance with the rules applicable to supplemental air carriers in accordance with § 121.3(e) and be issued supplemental operations specifications. The FAA has issued interpretive material to explain the correct application of these rules, but believes that the regulations should be clarified."

These 21 operators now have the appropriate operations specifications and have been brought in compliance with the applicable regulations in Part 121 so that this revision of SFAR 38 imposes no burden.

This commenter aiso thought that elimination of the "pass-through" provision in paragraph 2(d) of SFAR 38 would impose a similar burden. However, the inclusion of paragraph 4(b) as proposed allows persons operating transport category airplanes to obtain approval from the Administrator to conduct those operations under the appropriate provisions of Part 121. This provision is less limited than the original passthrough provision (which applied only to operations existing on December 1, 1978) and applies only when requested by the operator and approved by the Administrator.

Two commenters object to the definition of "commuter air carriers." One of the commenters seems to object to applying the term "commuter" to air carriers who are operating under Part 121 domestic rules, but who are operating propeller driven aircraft of less than 60 seats. Such operators consider themselves to be "regional" air carriers who compete equally with other types of air carriers. However, the definition of commuter air carriers does not apply to operations under Part 121 because it applies only to operations under Part 135 with aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

A second commenter objects to provisions in the definition of "commuter air carriers" that state that frequency of operations is "at least five round trips per week on at least one route between two or more points...." The commenter objects on the basis that the definition constitutes a public convenience and necessity requirement and that the authority domestically to issue a Certificate of Public Convenience and Necessity for domestic operations was terminated by Congress on January 1, 1982. In response, the FAA does not intend by this definition to create a public convenience and necessity requirement in the "commuter air carrier" definition. The definition has been used historically in Part 135 to refer to scheduled operations as opposed to non-scheduled. To preclude a change in the operations requirements prescribed in SFAR

occasion, charter flights are announced in advance, the charter operator normally does not commit to having the flight operate unless a minimum load of passengers is hooked in advance. Thus, the general public cannot depend upon a chartered flight maintaining a schedule (for example, there may be a last minute flight cancellation because not enough passengers signed up for the flight) as they can on a scheduled flight. An operator who attempts to hold itself out as a charter operator but who, in fact, announces regularly scheduled flights to the public would be considered a scheduled operator and would have to comply with the regulations for scheduled operations under Part 121 or Part 135, as appropriate.

Two commenters expressed concern that the definition of ''air carriers'' in Section 6(c)(1) would require all indirect ''air carriers'' to have operating certificates and operations specifications under Section 1(c) which states that ''no person may operate without, or in violation of, a certificate and operations specifications issued under this SFAR.''

While it is true, as these commenters point out, that the Federal Aviation Act of 1958 defines ''air carrier'' to include one who acts ''indirectly,'' the FAA has never extended its air carrier regulations to persons who are legitimately engaged in indirect operations such as bona fide freight forwarder. SFAR 38–2 does not treat indirect operators any differently than current SFAR 38 and so there is no substantive change. However, this does not mean that an indirect air carrier can avoid air carrier certification requirements if, in fact, that carrier is engaged in the operation of aircraft or exercises its authority over initiating, conducting, or terminating a flight or flights.

One commenter states that the application of Part 135 is somewhat open-ended with respect to rotorcraft having a passenger seating configuration of more than 30 seats or a maximum payload capacity of more than 7,500 pounds. The commenter states that in their responses to other rulemaking proposals concerning rotorcraft, such as Notice No. 85–8 (50 FR 10144, March 13, 1985), industry groups must now consider future operations of larger helicopters under Part 135. In response, the FAA notes that the proposal to require all sizes of rotorcraft to be operated unde resrt 135 is banto on the recognition that there are significant deficiencies in Parts 121 and 127 that must be addressed before authorizing any rotorcraft operations under those rules. The issuance of special operations specifications is identified in the preamble of the proposal as an option to permit the operation of larger rotorcraft under Part 135. In the meantime, Exemptions Nos. 4109 and 4297 have been issued to two operators to permit the operation of BV–234 helicopters under Part 135. The FAA recognizes that additional rulemaking is needed to adequately cover the operation of rotorcraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds. In the interim, since Part 135 does not presently address that size rotorcraft, operators of these rotorcraft will be issued special operations specifications which will provide for the appropriate level of safety required for that size aircraft. New paragraphs 4(d) and 5(d) are added to this SFAR to clarify this point, and to spell out what was intended in the NPRM.

Three commenters suggest changes which are beyond the scope of this Notice of Proposed Rulemaking. As stated earlier in this notice and in the NPRM, this rulemaking updates and clarifies SFAR–38; it does not substantively revise the basic applicability of the affected parts. Therefore, these recommendations for substantive change beyond the scope of Notice 85–3 have not been considered in this rulemaking.

The FAA evaluated the economic impact of this amendment. This amendment is not expected to cause an adverse economic impact on the regulated parties because it is essentially clarifying in nature. The findings of FAA's evaluation are summarized below and a copy of the regulatory evaluation is contained in the docket.

The rule (1) Specifies and clarifies certification requirements and regulations operators must comply with in conducting specific operations, (2) includes regulations that have been promulgated and deletes references to regulations that have been withdrawn since the adoption of SFAR 38, and (3) suspends regulations that are no longer applicable.

As previously pointed out, it is the FAA's position that the current regulations require scheduled operations in airplanes with more than 30 passenger seats to be conducted under the domestic or flag air carrier rules. Therefore, as the result of this rule, there should be minimal economic impact on the approximately 21 carriers previously discussed. Accordingly, a full economic evaluation is not required. Notwithstanding the above position, an evaluation was performed. This evaluation reveals that a small net benefit will accrue to the affected carriers because costs that may result from having to comply with the domestic and flag rules would be more than offset by cost savings associated with relaxation of reserve fuel requirements.

SFAR 38–2 suspends Part 127 and requires all rotorcraft carriers currently operating under Parts 121 and 127 to conduct their operations under Part 135. Such a change is expected to enhance safety because Part 135 contains safety related requirements for rotorcraft not specified in either Part 121 or 127. This rule will not generate any additional costs to regulated parties. At present, only two carriers, under exemption authority, operate rotorcraft with a capacity in excess of 30 seats or a 7,500-pound payload under Part 135. These rotorcraft would normally be subject to the provisions of Part 121 or 127. Moreover, commuter operations with large rotorcraft currently do not appear feasible at locations where the geographical distribution of service points make rotorcraft operations viable.

## Trade Impact Statement

The FAA finds that the amendment will have no impact on international trade.

## Regulatory Flexibility Determination

The FAA finds that the amendment will have no consequential economic impact on small entities. Accordingly, the FAA finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

## Conclusion

For the reasons stated under the heading ''Economic Impact,'' the FAA has determined that this document involves a rule which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Also, for the reasons stated under the heading ''Trade Impact Statement and Regulatory Flexibility Determination,'' I certify that the rule will not have a substantial economic impact on a substantial number of small entities. The total projected impact of the amendment may be found in a copy of the regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption ''FOR FURTHER INFORMATION CONTACT.''

(SFAR) No. 38–2(50 FR 23941; June 7, 1985). SFAR revised SRAR 38 primarily by specifying and clarifying FAA requirements for operating certificates and operations specifications for persons who operate under Federal Aviation Regulations (FAR) Parts 121 and 135. The amendment brought SFAR 38 up to date in view of changes in the regulations and the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's response to the sunset of the Civil Aeronautics Board (CAB). Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 (ADA) and the termination of CAB functions attendant on the CAB sunset, the FAA now concludes that it is necessary to extend the termination date of SFAR 38–2 to allow time for the FAA, in a separate rulemaking action, to propose and receive comments on the incorportaion of SFAR 38–2 into the FAR. The termination date for SFAR 38–2 is extended to June 1, 1987. The FAA intends to publish a notice rescinding SFAR 38–2 and a final rule incorporating SFAR 38–2 into the FAR concurrently in the Federal Register.

Comments must be received on or before June 9, 1986.

**ADDRESSES:** Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Coffey, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426–8096.

## Background

On December 12, 1978, the FAA promulgated SFAR 38 in consequence of the ADA (Pub. L. 95–504, 92 Stat. 1705). That Act embodies the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984. Anticipating its sunset, the CAB curtailed or suspended much of its regulatory activity during the period 1979–1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, those remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation which existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transportation'' operations for ''compensation or hire'' (SFAR 38 did not address

in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guldelines to determine what safety standards were applicable to an air carrier's particular operation.

## Good Cause Justification for Immediate Adoption

The termination date for SFAR 38–2 and the operating certificates issued under SFAR 38, as amended, is May 1, 1986. The reasons which justified the adoption, and the subsequent revision, of SFAR 38 still exist. The FAA is currently preparing a Notice of Proposed Rulemaking (NPRM) which will consolidate the certification rules now in Parts 121 and 135 into a new Part of the FAR. This NPRM will also propose incorporating the necessary portions of SFAR 38–2 into the FAR. Therefore, it is in the public interest to extend the termination date of SFAR 38–2 from May 1, 1986 to June 1, 1987, although the FAA anticipates that a final rule incorporating SFAR 38–2 in the FAR will be published before then. If it is, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under operating certificates issued under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

In addition, since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

## Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

## Conclusion

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

2 (50 TR 23941; June 7, 1985) and establishes a new termination date. The SFAR 38–2 was previously amended by SFAR 38–3 (51 FR 17274; May 9, 1986) to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) that would consolidate the certification rules now in Parts 121 and 135 into a new part of the FAR. This NPRM would also propose incorporating the necessary portions of SFAR 38–2 into the FAR. Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 (ADA) and the termination of CAB functions following the CAB sunset, the FAA now concludes that it is necessary to renew the effectiveness of SFAR 38–2 and to establish a new termination date to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38–2 into the FAR. The termination date for reinstated SFAR 38–2 is June 1, 1989. The FAA intends to publish a notice rescinding SFAR 38–2 and a final rule incorporating SFAR 38–2 into the FAR concurrently in the Federal Register.

**Comments must be received on or before October 5, 1987.**

**ADDRESSES:** Send comments on the rule in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rule Docket (AGC–204), Docket No. 18518, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rule Docket, Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Coffey, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 267–3750.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 12, 1978, the FAA promulgated SFAR 38 (43 TR 58366; December 14, 1978) in consequence of the ADA (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that various of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standards of safety in air transportation that existed when the ADA was enacted. The

changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On May 8, 1986, the FAA adopted SFAR 38–3, which merely extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into an NPRM that will propose consolidation of the certification rules in Parts 121 and 135, and will incorporate various provisions of SFAR 38–2 into a new part of the FAR.

## Good Cause Justification For Immediate Adoption

Because of unavoidable, administrative delays, SFAR 38–2 terminated on June 1, 1987. The reasons which justified the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to reinstate SFAR 38–2 and to establish a new termination date of June 1, 1989, although the FAA anticipates that a final rule incorporating SFAR 38–2 into the FAR will be published before then. If it is, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they may desize regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

## Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

## Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

Regulation [SFAR] No. 38–2 [50 FR 23941, June 7, 1985]. SFAR 38–2 was reinstated by SFAR 38–4 [52 FR 28938, August 4, 1987] and was amended to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) [Notice No 88–16, 53 FR 39852, October 12, 1988] to consolidate the certification rules now in SFAR 38–2, Part 121, and Part 135 into a new Part 119 of the Federal Aviation Regulations (FAR). The FAA stated in SFAR 38–3 and in SFAR 38–4 that having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 [ADA or Act] and the termination of Civil Aeronautics Board (CAB) functions following the CAB sunset, it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38–2 into the FAR. The current termination date for SFAR 38–2 is June 1, 1989. Because the FAA has not completed this rulemaking process it is necessary to extend the current termination date 1 year. If new Part 119 is issued before June 1, 1989, or before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the new Part 119 final rule in the Federal Register.

**EFFECTIVE DATE:** June 2, 1989. Comments must be received on or before August 1, 1989.

**ADDRESSES:** Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (ACC–10). Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue. SW., Washington. DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Coffey, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3750.

## SUPPLEMENTAL INFORMATION:

### Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366, December 14, 1978] in consequence of the ADA (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that various of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section

propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 [50 FR 23491, June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3, which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88–16. That notice proposes to consolidate the certification rules in Parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4, which reinstated SFAR 38–2 because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16.

## Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1990. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

## International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

**Adoption of the Amendment**

In consideration of the foregoing SFAR 38–2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 2, 1989.

The authority citiation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) revised Pub. L. 97–449, January 12, 1989.

Regulation [SFAR] No. 38–2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirement for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38–2 that it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification and operating requirements rules and incorporate SFAR 38–2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38–2 is June 1, 1990. Because the FAA has not completed that rulemaking process, it is necessary to extend the current termination date 1 year. SFAR 38–2 is extended to ensure that the FAA has adequate time to complete the consolidation of the certification and operating requirements rules; however, if the new consolidation is issued as a final rule before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the publication of the final rule in the Federal Register.

**DATES:** Effective date is June 5, 1990. Comments must be received on or before August 6, 1990.

**ADDRESSES:** Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 am. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Coffey, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3750.

## SUPPLEMENTAL INFORMATION:

### Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transportation'' operations for ''compensation

because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized fo conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3, which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88–16. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4, which reinstated SFAR 38–2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16. On May 26, 1989, the FAA issued SFAR 38–5, which extended the expiration date of SFAR 38–2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88–16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38–2, Part 121, and Part 135.

## Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1991. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

## International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

**Adoption of the Amendment**

In consideration of the foregoing SFAR 38–2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 5, 1990.

The authority citation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

Regulation [SFAR] No. 38–2 [50 FR 23941; June 7, 1985], which contains the certification and operating rtionrements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38–2 that it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38–2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38–2 is June 1, 1991. Because the FAA has not completed that rulemaking process, a 1-year extension of the termination date is necessary. SFAR 38–2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the publication of the final rule in the Federal Register.

**DATES:** Effective date May 28, 1991. Comments must be received on or before August 5, 1991.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comment triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 am. and 5 pm.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donell Pollard, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3750.

## SUPPLEMENTAL INFORMATION:

### Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measu thoo provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when thomicA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transportation'' operations for ''compensation

because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3, which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88–16. That notice proposes to consolidate the certification and operating requirements rules in Parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4, which reinstated SFAR 38–2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16.

On May 26, 1989, the FAA issued SFAR 38–5, which extended the expiration date of SFAR 38–2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88–16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38–2, Part 121, and Part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 [55 FR 14404; April 17, 1990] for comments on the definition of ''scheduled operation'' and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38–2 until June 1, 1991 [55 FR 23043].

Currently, the FAA is completing work on the final rule that would make SFAR 38–2 a permanent Federal Aviation Regulation; therefore it is necessary to extend the expiration date for SFAR 38–2 until June 1, 1992.

## Good Cause For Immediate Adoption Justification

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1992. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a scant economic impact on a substantial number of small entities.

## International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

## Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

## Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

## Adoption of the Admendment

In consideration of the foregoing SFAR 38–2(14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective May 28, 1991.

The authority citation for Part 129 continues to read as follows:

*Authority:* 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S. C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

Regulation [SFAR] No. 38–2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38–2 that it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38–2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38–2 is June 1, 1992. Because the FAA has not completed that rulemaking process, a 1-year extension of the termination date is necessary. SFAR 38–2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the publication of the final rule in the *Federal Register*.

**DATES:** Effective date–June 1, 1992. Comments must be received on or before August 3, 1992.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donell Pollard, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3750.

## SUPPLEMENTAL INFORMATION:

### Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish it involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistant with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transpor-

regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates where rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various type of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operations authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3 [51 FR 17274; May 9, 1986], which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88-16 [53 FR 39852; October 12, 1988]. That notice proposes to consolidate the certification and operating requirements rules in Parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4 [52 FR 28938; August 4, 1987], which reinstated SFAR 38–2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16.

On May 26, 1989, the FAA issued SFAR 38–5 [54 FR 23884; June 2, 1989], which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to conside coments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38–2, Part 121, and Part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 [55 FR 14404; April 17, 1990] for comments on the definition of ''scheduled operations'' and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991. [55 FR 23046; June 5, 1990]. Because of the complexity of the comments, the expiration date for SFAR 38-2 again was extended until June 1, 1992 [56 FR 25450; June 4, 1991].

Based on comments received, the FAA has determined that a different definition of ''scheduled operation'' should be proposed for public comment. Therefore, in order to allow time to issue the supplemental notice of proposed rulemaking, consider comments, and issue a final rule, it is necessary to extend the expiration date for SFAR 38–2 until June 1, 1993.

**Good Cause Justification For Immediate Adoption**

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1993. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

Rules Docket for examination by interested parties.

## Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disporportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

## International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

## Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

## Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

## Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 1, 1992.

The authority citation for Part 129 continues to read as follows:

*Authority*: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

**SUMMARY:** This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1993. Because the FAA has not completed that rulemaking process, an extension of the termination date is necessary. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules. is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the *Federal Register.*

**DATES:** Effective date: June 18, 1993. Comments must be received on or before August 24, 1993.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 915g, 800 Independence Avenue, SW., Washington, D.C. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Davis, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8096.

## SUPPLEMENTAL INFORMATION:

### Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979—1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transportation'' operations for ''compensation or hire.'' (SFAR 38 did not address Part 133 External

regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3 [51 FR 17274; May 9, 1986], which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16 [53 FR 39852; October 12, 1988]. That notice proposes to consolidate the certification and operating requirements rules in Parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4 [52 FR 28938; August 4, 1987], which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

On May 26, 1989, the FAA issued SFAR 38-5 [54 FR 23884; June 2, 1989], which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, Part 121, and Part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of ''scheduled operation'' and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991 [55 FR 23046; June 5, 1990]. Because of the complexity of the comments, the expiration date for SFAR 38-2 was extended until June 1, 1992 [56 FR 25450; June 4, 1991], and subsequently again extended until June 1, 1993 [57 FR 23922; June 4, 1992].

Based on comments received. the FAA has determined that a different definition of ''scheduled operation'' should be proposed for public comment. That supplemental notice was published June 8, 1993 [58 FR 32248]; the comment period closes July 23, 1993. However, to allow time to consider comments and issue a final rule, the FAA has determined that it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1995.

## Good Cause Justification For Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1995. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and

All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

### International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

### Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0008.

### Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

## CONCLUSION

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

## ADOPTION OF THE AMENDMENT

In consideration of the foregoing SFAR 38-2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 18, 1993.

The authority citation for Part 129 is revised to read as follows:

*Authority:* 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

(1) The types of operating certificates issued by the Federal Aviation Administration;

(2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and

(3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications.

A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of Part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

2. *Certificates and foreign air carrier operations specifications.*

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Action Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of Part 129 and shall conduct their operations within the United States in accordance with those requirements.

3. *Operations specifications.*

The operations specifications associated with a certificate issued under paragraph 2(a) or (b) and the operations specifications issued under paragraph 2(c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

4. *Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.*

authorized by the Administrator, with those airplanes in accordance with the requirements of Part 121 applicable to domestic air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(2) Scheduled operations to points outside the 48 contiguous states of the United States and the District of Columbia with those airplanes in accordance with the requirements of Part 121 applicable to flag air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) All-cargo operations and operations that are not scheduled with those airplanes in accordance with the requirements of Part 121 applicable to supplemental air carriers, and shall be issued operations specifications for those operations in accordance with those requirements; except the Administrator may authorize those operations to be conducted under paragraph (4)(a)(1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in Part 135, and conduct its operations with those airplanes in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

5. *Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.*

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in Part 125, and conduct its operations with those airplanes in accordance with the requirements of Part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in Part 135, and conduct its operations

(a)(3) Operating requirements.

(b) Operations conducted under more than one paragraph.

(c) Prohibition against operating without certificate or in violation of operations specifications.

2. Certificates and foreign air carrier operations specifications.

(a) Air Carrier Operating Certificate.

(b) Operating Certificate.

(c) Foreign air carrier operations specifications.

3. Operations specifications.

4. Air carriers and those commercial operators engaged in scheduled intrastate common carriage.

(a)(1) Airplanes, more than 30 seats/7,500 pounds payload, scheduled within 48 States.

(a)(2) Airplanes, more than 30 seats/7,500 pounds payload, scheduled outside 48 States.

(a)(3) Airplanes, more than 30 seats/7,500 pounds payload, not scheduled and all cargo.

(b) Airplanes, 30 seats or less/7,500 or less pounds payload.

(c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.

(d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

(a) Airplanes, 20 or more seats/6,000 or more pounds payload.

(b) Airplanes, less than 20 seats/less than 6,000 pounds payload.

(c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.

(d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

6. Definitions.

(a) Terms in FAR.

(1) Domestic/flag/supplemental/commuter.

(2) ATCO.

(b) FAR references to:

(1) Domestic air carriers.

(2) Flag air carriers.

(3) Supplemental air carriers.

(4) Commuter air carriers.

(c) SFAR terms.

(1) Air carrier.

(8) Maximum zero fuel weight.

(9) Justifiable aircraft equipment.

capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

6. *Definitions.*

(a) Wherever in the Federal Aviation Regulations the terms—

(1) ''Domestic air carrier operating certificate,'' ''flag air carrier operating certificate,'' ''supplemental air carrier operating certificate,'' or ''commuter air carrier (in the context of Air Carrier Operating Certificate) appears, it shall be deemed to mean an ''Air Carrier Operating Certificate'' issued and maintained under this SFAR.

(2) ''ATCO operating certificate'' appears, it shall be deemed to mean either an ''Air Carrier Operating Certificate'' or ''Operating Certificate,'' as is appropriate to the context of the regulation. All other references to an operating certificate shall be deemed to mean an ''Operating Certificate'' issued under this SFAR unless the context indicates the reference is to an Air Carrier Operating Certificate.

(b) Wherever in the Federal Aviation Regulations a regulation applies to—

(1) ''Domestic air carriers,'' it will be deemed to mean a regulation that applies to scheduled operations solely within the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(1) of this SFAR.

(2) ''Flag air carriers,'' it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) ''Supplemental air carriers,'' it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) ''Commuter air carriers,'' it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4(b) or (c) of this SFAR. This definition does not apply to Part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) ''Air carrier'' means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) ''Commercial operator'' means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) ''Foreign air carrier'' means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

equipment, and less the operating load (consisting of minimum flight crew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(ii) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) ''Empty weight'' means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) ''Maximum zero fuel weight'' means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.

(9) ''Justifiable aircraft equipment'' means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

This Special Federal Aviation Regulation No. 38–2 terminates [June 1, 1995], or the effective date of the codification of SFAR 38–2 into the Federal Aviation Regulations, whichever occurs first.

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